# CITIZENSHIP AS A STATENESS BOUNDARY MAINTENANCE REGIME:

# THE CURIOUS CASE OF LITHUANIAN DUAL CITIZENSHIP

by
Egle Verseckaite

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**Abstract**

In November 2006, the Constitutional Court of the Republic of Lithuania struck down the Law on Citizenship which allowed dual citizenship for ethnic Lithuanian emigrants, but not for representatives of ethnic minorities who have emigrated to their kin-states, as a case of ethnic discrimination. However, instead of expanding the availability of dual citizenship to ethnic minority migrants, the Constitutional Court ruled that widespread dual citizenship is unConstitutional and undesirable. Such a ruling went not only against the preferences of the Lithuanian general public, minorities, and politicians, but also against the predictions of mainstream citizenship studies which presume that an emigration country would seek to expand rather than curtail dual citizenship for its diaspora, and that European integration is supposed to make postcommunist countries more inclusive. This empirical puzzle prompted an inquiry into the approach dominating the field of citizenship studies – the twin liberalization/ convergence theses. The convergence thesis suggests that citizenship regulation is becoming similar accross different countries, especially in Europe, and the liberalization thesis suggests that this convergence is moving in the direction of greater accessibility of citizenship, including expanded opportunities for dual citizenship, expansion of rights for migrants, and a decline of the importance of identitarian criteria for ascription of citizenship. I challenge this thesis by noting how the decoupling of rights from citizenship unintentionally re-emphasizes its identitarian dimension.

I analyze public discourse, parliamentary proceedings, and Constitutional Court rulings, and conclude that Lithuania‘s unexpected restrictive turn is a result of the combination of contradictory influence of the international norms and the enduring concerns with stateness – the requirement for a state to have a clearly established territory

and citizenry. On the basis of the case findings, I conceptualize citizenship as a boundary maintenance mechanism in reaction to the combination of concerns with stateness and the international norms which both delegitimize and reinforce the identitarian dimension of citizenship, and set out to test whether it has comparative purchase outside of the postcommunist region.

An overview of dual citizenship regulations and discourse in different regions supports my argument that, even if there is a nominal upward trend in availability of dual citizenship, its identitarian dimension overshadows the instrumental dimension and is intermeshed with the use of citizenship to maintain the boundary of stateness. Although studies of democratic transition have relegated stateness issues to the postcommunist world, I demonstrate that it is relevant not only for a postcolonial country that has experienced foreign domination, but also for established Western states due to the pressures of globalization and migration.

*Keywords:* dual citizenship; identitarian dimension of citizenship; Central and Eastern Europe; EU conditionality; liberalization/ convergence thesis; stateness.

*Dissertation defense committee:*

- Erin Chung
- Richard Katz
- Margaret Keck
- Ho-fung Hung (chair)
- Erin Rowe

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Coming full circle, if my journey into political science started with a desire to understand politics and to be able to make a difference, I can only hope that this dissertation will contribute to understanding the dual citizenship issues that my country is facing and to the discussion on dual citizenship in Lithuania.

## Table of Contents

## List of Tables

## List of Figures

## List of Abbreviations

| | |
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| CEE | Central and Eastern Europe |
| CSCE | Conference on Security and Cooperation |
| EU | The European Union |
| NATO | The North Atlantic Treaty Organization |
| OSCE | Organization for Security and Cooperation in Europe |
| UK | The United Kingdom |
| UN | The United Nations Organization |
| USA | The United States of America |
| USSR | The Union of Soviet Socialist Republics |

## Introduction

"The politics of citizenship today is first and foremost a politics of nationhood."
(R.Brubaker, Citizenship and Nationhood in France and Germany, 1992: 180.)

*The Puzzle*

In October 2006 the Constitutional Court of the Republic of Lithuania investigated a question raised by a group of members of the Parliament of Lithuania on whether the Law on Citizenship was unConstitutional in that it discriminated based on ethnicity and descent. This question was combined into one case together with a district court inquiry regarding an Israeli citizen who wanted to regain her Lithuanian citizenship, which she possessed before World War II, in order to achieve restitution of her property. She had been refused citizenship on the basis of the law that allowed ethnic Lithuanians to retain Lithuanian citizenship if they emigrated, but forbade preservation of Lithuanian citizenship for people of other ethnicities who repatriated to their ethnic homelands. The Israeli citizen brought the case to court and claimed that any attempt to establish repatriation to an ethnic homeland requires inquiries into a person's ethnicity and thus is an instance of discrimination prohibited by the Constitution of Lithuania.

At first sight, this would seem to be a fairly straightforward case of ethnic citizenship policy traditionally associated with Central and Eastern European countries. Yet the Constitutional Court produced an unexpected ruling on November 13, 2006, declaring not only that the preference given to Lithuanians was discriminatory, but also that the widespread availability of dual citizenship was unConstitutional. This outcome upset the plaintiffs, the Lithuanian public and politicians, and the mainstream theories on dual citizenship. At that time Lithuania was the country of largest net emigration (in

percentages of population) in the EU, and scholars would assume that, as a sending country, it should favor dual citizenship as a means of maintaining ties with its expatriates, rather than forbid it. The mainstream hypothesis pertaining to emigration countries holds that the sending state takes on the active pursuit of transantionalism, exclusively focusing on co-ethnics abroad. The state seizes the policy of dual citizenship as a means to control border-crossing social formations and to further remittances and investment by emigrants in the country of origin (Faist 2007; Fitzgerald 2009; Schmitter Heisler 1985; Smith 2003b; Varadarajan 2010). Furthermore, as Faist (2007: 5-6) points out, once instituted, dual citizenship is unlikely to be reversed. Finally, even the scholars who are cautious not to overemphasize the purported trend towards greater inclusiveness of citizenship regulation tend to associate liberalization with elites and restrictiveness with popular opinion (Howard 2009), whereas in the Lithuanian case the restrictive move was undertaken by elites in the face of widespread public disapproval. In sum, the case of Lithuanian dual citizenship contradicts all expectations of the mainstream approaches to emigrant-sending country behavior.

We are thus presented with a genuine puzzle: why does Lithuania, a quintessential emigration country, fly in the face of all the mainstream predictions? The ruling appears even more counterintuitive if one looks for an explanation in its temporal and geopolitical context. Temporally speaking, this was the time of unprecedented emigration high on the national political agenda, which would lead us to expect that the aforementioned predictions about the behavior of emigration countries should be manifest in Lithuania. Membership in the NATO and the EU, which were also the recipients of the absolute majority of emigrants in question, for a time could be considered to have rendered

traditional concerns with conflicting loyalties of dual citizens geopolitically obsolete. Furthermore, European integration makes it possible to utilize certain political and social rights without having citizenship of the locale where a person finds himself or herself, thus questioning the practical importance of citizenship. Taking EU membership into account, it becomes unclear why the debates on Lithuanian dual citizenship are so contentious. When juxtaposed with significant outmigration of the population and overwhelming public support for providing dual citizenship to ethnic Lithuanians, the restrictive dual citizenship regime that has resulted from the Lithuanian Constitutional Court ruling requires more explanatory power than one could afford a casuistic reading of the text of the Constitution. This thesis investigates the paradoxical case of Lithuanian dual citizenship in an attempt to refine the mainstream citizenship studies assumptions which this case challenges. I propose that Lithuania's unexpected restrictiveness is a result of the interaction between the hegemony of international norms of nondiscrimination, the strengthening of the identitarian dimension of citizenship as an unintended consequence of European integration, and concerns with stateness.

*Theoretical Background*

The focal point of my dissertation is the question of declining exclusivity of political membership in a nation-state that has come to occupy a prominent place in social scientific inquiry in the past couple decades. There are three interrelated strands of literature that can be interrogated using the Lithuanian case of citizenship. The move towards greater restrictiveness of the Lithuanian dual citizenship regime can be juxtaposed with the mainstream citizenship studies' claim that citizenship regulation is becoming increasingly liberal across the world. A second strand of literature, which partly overlaps

with the first one, focuses on European integration and treats the EU as, first, the laboratory for liberal convergence, and, second, as a positive influence that moderates ethnonationalist proclivities of the postcommunist Central and Eastern European states. The third body of literature that is challenged by the Lithuanian case concerns dual citizenship seen as an indicator of liberalization and how an emigration country relates to dual citizenship. These strands are disentangled in detail in the first chapter of this dissertation, but here it is important to position my research in relation to the existing body of knowledge by briefly addressing this constellation of literature.

*Citizenship, Nationhood, Migration, and the Liberal/Convergence Thesis*

Citizenship is a multifaceted concept that can be studied in numerous ways, from normative political approaches of what it entails and how it should be practiced to legalistic analysis of rules and regulations. In my dissertation, I use the concept of citizenship to designate a legal status composed of two mutually ambivalent clusters of elements: rights and duties of an individual, and identity, membership, and participation in a political community (Kivisto and Faist 2007), i.e. a combination of an instrumental and an identitarian dimensions. One of the central tenets on which my approach is built lies in the understanding of citizenship as the interface between the individual, the state, and the international levels, expressed through the nexus between citizenship, nationhood and migration. This nexus, and the states' efforts to cope with the volume, salience, and changing patterns of migration that are part and parcel of globalization, is becoming increasingly relevant across world regions. I argue that taking into account migration issues is indispensable when studying citizenship regulation in any given country, and that dual citizenship is especially propitious for the study of the nexus between citizenship and

migration. The very fact of migration, whose current volume amounts to 3 percent of the world's population (Segal *et al.* 2010), is not new, but its political salience has been sharpened by the synergy between xenophobic popular opinion and politicians willing to manipulate it for electoral gains, facilitated by the scare of terrorism and the perceived failure of immigrant integration in receiving countries. Paradoxically, citizenship studies have consistently pointed out that citizenship regulation is becoming increasingly liberal across the world, a hypothesis that is connected with the question of the role of international norms diffusion and its potential to mitigate discrimination and inequality.

In an influential study that revitalized scholarly interest in citizenship, Brubaker (1992a) posited that states can be characterized by distinct citizenship regimes underpinned by distinct conceptions of nationhood. He identified a civic and an ethnic citizenship regime, distinguished by a different emphasis on the relationship between a state and an ethnic group that forms the basis of its population, but emphasized the fundamental imbrications between citizenship as membership in the state, on the one hand, and national identity, on the other. This nexus between citizenship status and national identity has been increasingly challenged by claims that, in the globalized world, characterized by increasing flows of migration, descent-based conceptions of citizenship are delegimitized and are giving way to civic orientations that do not rely on the correlation between the dominant ethnic group and the political community in apportioning political membership (Kaufmann 2000).

In essence, the liberalization/convergence thesis is built on either postnationalist or multiculturalist lines of reasoning that address the question of declining exclusivity of political membership in a nation-state. Both of these camps are characterized by a

combination of normative and empirical scholarship in that they both proclaim and herald a shift towards a decline of the centrality of nationhood (contra Brubaker 1992a) and an increase of inclusiveness on the part of the state. Multiculturalists address the increasing ethnic and cultural diversity within states and associate it with minority claim making and a lessening of the homogenizing impulse inherent in nation states in general and in citizenship in particular (Abu-Laban 2002; Bloemraad, Korteweg, and Yurdakul 2008; Koopmans and Statham 1999; Kymlicka 2007). Postnationalists focus on the decoupling of rights and citizenship and claim that the nation-state is losing its relevance, giving way to increasing availability of rights based on residence rather than citizenship enabled by the hegemonic international human rights regime (Soysal 1994; Jacobson 1996; Shafir and Brysk 2006). The European Union, as an 'ever closer union', is viewed as the incubator of postnationalism *par excellence*, a factual negation of exclusivity of loyalties (Hansen and Weil 2002; Soysal 1994). In Chapter 1, I address the developments in European Union in greater detail as they pertain to the twin hypotheses of liberalization and convergence, and in Chapter 5 I revisit the EU in light of the findings distilled from the empirical data analysis of the Lithuanian case. Looking at the conditions of possibility of access to residency and then citizenship in the EU countries, I develop the argument that, rather than heralding the advent of postnationalism, the decoupling of people, rights and territory taking place due to European integration has inadvertently strengthened the identitarian dimension of citizenship, as evidenced in the increasingly stringent requirements for migrant integration. Even if the simplified assumption of the derivation of citizenship policies from the ethnic or civic nationhood conceptions has been widely discredited, the

actual complexities of the relationship between national identity and citizenship merit our scholarly attention (Bauböck 2006).

*Dual Citizenship and Postnationalism*

In the past decade the celebration of the decline of the nation-state has been checked by an acknowledgment of a countervailing trend towards a more restrictive backlash that is mostly ascribed to securitization in the post-9/11 context (Bauböck 2006; Faist and Kivisto 2007). Nevertheless, the prevalent theories posit a convergence towards greater liberalization of citizenship legislation, and the rules regarding dual citizenship are considered to be one of the key indicators attesting to such liberalization. Even where there are indications of securitization-induced restrictiveness towards immigrants, the expanding possibilities for co-ethnic emigrants to gain dual citizenship are rarely questioned by most theorists (Bauböck, Ersbøll, Groenendijk and Waldrauch 2006; Faist 2007; Faist and Kivisto 2007; Howard 2009), making Lithuania a deviant case and thus especially interesting to investigate.

More than half of the countries in the world today tolerate some form of dual citizenship due to the combination of an uncoordinated variety of state citizenship policies (*ius soli*, *ius sanguinis*, and combinations thereof), large scale migration, a decrease in the likelihood of putting competing loyalties to the test, and the expansion of human rights, especially the imperative of gender equality (Blatter, Erdmann and Schwanke 2009; Brøndsted Sejersen 2008; Koslowski 2000; Howard 2005; Renshow 2005; Kivisto and Faist 2007). However, a lack of hard quantitative data on the numbers of dual citizens limits a major part of literature to discussions of potential benefits and dangers of dual citizenship and its un/desirability (Bar-Yaacov 1961; Hammar 1989; Hansen and Weil 2002; Martin

and Heilbronner 2003; Renshow 2005). The proliferation of literature on dual citizenship in the past decade has not produced significant changes in the main hypotheses it offers to social scientists. The prevalent theories assume that increasing availability of dual citizenship is due to immigrant-receiving countries' attempts to facilitate immigrant naturalization and incorporation, and to emigrant-sending countries' pursuit of remittances and political control of its co-ethnics abroad, and do not foresee a backlash against dual citizenship once it has been instituted (Faist 2007: 5-6). In the theoretical framework chapter I expand on these assumptions, and in the empirical chapters I explicate how the Lithuanian case challenges them, questioning whether dual citizenship is necessarily becoming more available, and whether it is better understood as a harbinger of postnationalism, or, conversely, as a reaffirmation of the identitarian dimension of citizenship.

Dual (or multiple) citizenship, understood as membership in more than one state, multiplies both the instrumental and the identitarian elements of citizenship and the problems of their reconciliation, thus exposing the cracks in the edifice of exclusionary state membership. However, inquiry into the relationship between the phenomenon of dual citizenship and the "analytical and normative nationalism" (Bosniak 2006: 5) that underlies citizenship studies needs to be informed by empirical investigation. My project addresses the question whether dual citizenship could be an indicator of postnationalism (Soysal 1994), multinationalisation (Bosniak 2006), or denationalization (Sassen 2002), by exploring whether it can be taken to signify the lessening of the emphasis on national identity in the discourse and practices of the nation-state. Posing the question in such terms also serves as a way to overcome the frequent binary compartmentalization of dual

citizenship as a tool of immigrant incorporation and as an instrument of maintaining connections with emigrants, and to bridge the divide between clusters of citizenship studies situated within- or outside- nation-state boundaries (Bloemraad, Korteweg, and Yurdakul 2008). Dual citizenship, as a hybrid phenomenon straddling the divide between outside- and in-nation-state perspectives, is an especially conducive lens for advancing the understanding of the contradictory trends of greater liberalization and increased restrictiveness, as well as the dynamics of what Joppke (2005) calls "de- and re-ethnicization" of citizenship. Focusing on the changes in citizenship regulation offers additional analytical purchase by departing from the static bias inherent in such dichotomizing categories as civic/ethnic and sending/receiving countries. Close examination of the discourse on dual citizenship enables us to explore whether the ensuing changes in citizenship regulation are indeed characterized by greater inclusiveness both formally and substantively, going beyond quantitative indicators or metanormative argumentation, as well as beyond acknowledging the determining role of path dependency in shaping each country's approach to dual citizenship (Faist, Gerdes, and Rieple 2004; Faist 2007). My argument is that, in the context of purported postnational decoupling of rights and citizenship, dual citizenship tips the balance of scale from the instrumental to the identitarian dimension of citizenship in countries across the board.

Faist (2007) claims that dual citizenship debates in European countries indicate a shift from preoccupation with nationhood to concern with societal integration. My project revisits such notions and proposes to explore the discourse on dual citizenship to demonstrate the inseparability of societal integration from the notion of nationhood. The hypothesis that posits a convergence towards greater liberalization of citizenship is only

partly addressed by studies that focus on legal developments; the context and motives surrounding the regulations are crucial for establishing whether citizenship actually is more liberal and characterized by greater inclusiveness. I suggest that if the state connects dual citizenship with an explicit goal of facilitating immigrant assimilation, as evident in the recent shift towards an emphasis on more substantive integration requirements for naturalizing immigrants, it should be seen as a reaffirmation, rather than a negation, of the fundamental role of national identity in relation to citizenship.

*European Integration and Central and Eastern Europe.* The dynamics of the relationship between migration, citizenship and nationhood are especially interesting at the intersection of the European Union and the post-communist world. European integration has led many scholars to speculate on the changes in the exclusive primacy of political membership in the nation-state. On the other hand, national sovereignty and national identity have been at the center of politics in post-communist countries. When these two modes of political membership meet, the inherent tensions and vicissitudes are brought to the forefront. The curious case of dual citizenship in Lithuania provides an especially rich investigative field for addressing this intersection. of two fields of political membership that represent the competing paradigms – the European Union, seen as the pinnacle of observable postnationalist trends, on the one hand, and the postcommunist Central and Eastern Europe, the archetypical locus of ethnic citizenship tendencies, on the other (Brubaker 1992b, Kymlicka 2007).

Most scholarship on citizenship issues in Central and Eastern European states has been focused on their relationship with historical kin-minorities in neighboring countries, mostly concentrating on the case of Hungary (Batory 2010; Csergő and Goldgeier 2005;

Kovács 2006; McGarry and Keating 2006; Tóth 2003; Udrea 2014; Waterbury 2014), whereas the case of Lithuania presents an opportunity to incorporate the novel aspects of increased migration tied to belonging to the common EU space into citizenship studies of this region. The patterns of migration across the world are changing in ways that challenge both scholarship and policy addressing the nexus between migration and citizenship: migration is becoming increasingly circular, and a growing number of states that were considered sending states are also becoming countries of immigration, undermining the distinctions on which much of the thinking about the issues of migrant citizenship has been predicated. A study of the discourse on dual citizenship and its regulation in Lithuania, a country representing these trends and contradicting the mainstream theories, allows us to strive for a more nuanced understanding of contemporary changes in the nexus between migration patterns, citizenship regulations, and political community.

By focusing on the intersection between the EU and the postcommunist region, a closer look at the Lithuanian discourse on citizenship allows us to address the well-known hypothesis of EU-membership conditionality that attributes to the pursuit for EU membership the power of nudging the acceding countries away from an ethnic conception of citizenship and towards a more territorially based inclusiveness (Cirtautas and Schimmelfennig 2010; Csergő and Goldgeier 2005; Kelley 2006; Schimmelfennig and Sedelmeier 2005; Williams 2002). The bulk of research on the role of international norms in domestic change fails to analytically disentangle "genuine" normative socialization on the one hand, and strategic reasoning and action that breeds "Constitutional cheerleading" and Janus-faced structures and discourses on the other (Jacoby 1999). Analysis of the contentious discourse on dual citizenship provides an opportunity to avoid oversimplifying

the opposition between an 'ethnic' orientation of Central and Eastern European countries on the one hand, and a 'liberalizing' Western Europe, on the other, exploring instead the superimposition of international and domestic ideational spheres, an approach that leads to more fruitful research on norms diffusion (Checkel 1999; see e.g. Schwellnus 2005 for an account of the complementarity of EU conditionality and socialization in explaining Europeanization of the norms of nondiscrimination and minority protection in Central and Eastern Europe). Since the main strategic functions of political discourse are coercion/ resistance, legitimization/ delegitimization, and representation/ misrepresentation (Chilton and Schäffner 2011: 311-312), it provides a direct line to the exploration of the roles various ideas perform. Closer analysis of the ways in which European integration and international norms are deployed in the discourse on citizenship serves as one of the crucial elements in furthering an explanation of the curious case of Lithuanian dual citizenship.

Each of these arguments is developed in more detail in Chapter 1. As an inquiry into the changes in citizenship regulation and its relationship with the issues of nationhood, my study is directly informed by the debates between theorists who both celebrate and advocate the decline of importance of citizenship as exclusive political membership in the nation-state (Benhabib 2004, Bosniak 2006) and those who defend the normative value of the connection between citizenship and national identity (Miller 1997). However, I refrain from passing judgment on the case under investigation, choosing rather to highlight the deep-cutting contradictions that are informative of the fundamental aspects of the discourse of citizenship.

*Contribution to the Literature*

The main contributions of my research are twofold: explicating the increasing importance of the identitarian dimension of citizenship mentioned in the previous subsection and analyzed in more detail in Chapter 1, and proposing to concentrate on the interaction between international norms of nondiscrimination, the identitarian dimension of citizenship and concerns with *stateness* when analyzing citizenship regulation, which I briefly discuss in this subsection and flesh out throughout the paper as part of the theory-building endeavour.

The postcommunist region has traditionaly been approached through the lens of area studies or comparative analysis of democratic transition and consolidation, usually in juxtaposition to Latin America. In my quest to understand what factors could make Lithuania deviate from a pattern predicted by the prevalent approaches of citizenship studies, a natural place to turn to was its status as a postcommunist country. The classic work by Linz and Stepan (1996) on democratic consolidation suggested the variable of stateness as a key to the difficulty of postcommunist transition and democratic consolidation. They conceptualized stateness as an agreement on what the boundaries of the polity should be, both in terms of territory and in terms of its demos (Linz and Stepan 1996: 16). They contended that the better the congruence between the state and the nation, the greater national homogeneity, the easier the democratization. Unsurprisingly, establishing stateness was perceived as problematic in an area of the world characterized by a patchwork of changed borders and stranded minorities. In that sense, the concerns with stateness dovetail closely with the issue of state identity. It is one of those concepts that should be understood and captured on a large societal scale, so it did not receive much

attention beyond this field of study. Later attempts to further specify stateness relied on operationalization of the key features of a Weberian state, such as administrative capacity, effective security, domestic control and legitimacy (Melville, Stukal and Mironyuk, 2013, cf. Møller, Jørgen, and Svend-Erik Skaaning. 2011). Meanwhile, the identitarian dimension becomes relegated to a secondary role, whereas my goal is to bring it back to the forefront.

Linz and Stepan (1996) employed stateness in the analysis of democratization and political regimes, approaching it as precondition for successful democratic consolidation (see also Stepan, Linz and Yadav 2011), so it became inextricably intertwined with that field of study. One of the consequences of such a symbiotic relationship has been a relatively confined conception of stateness – either a country has stateness problems and consequently struggles in its democratic transition and consolidation, or the stateness is successfully established, the country consolidates its democracy, and its stateness does not get questioned any more. Linz and Stepan (1996) portrayed Western European and Latin American countries' stateness as not problematic, since they had taken care of their nation-building earlier. These authors are not alone in this approach, for example, Wilmer (2004) cites a conversation with a member of Milosevic's party during the Bosnian war who claimed that they were only doing what the Western states had done earlier in order to establish nation-states, giving the specific example of France.

However, I propose approaching the notion of stateness from a less static angle by accepting that stateness is never established irreversibly. The postcommunist states' politics are fundamentally affected by their awareness of their history of periodic dominance by foreign powers via Russian, Austrian or Ottoman imperialism. This is

certainly true for a country like Lithuania, which had been at war with Russia for centuries and got occupied by it three times in the past three hundred years. Events in Georgia in 2008 and Ukraine in 2014 testify to an existing continuous threat to the statehood of Russia's "near abroad" countries. Following this logic, due to awareness of the vulnerability of one's state, stateness requires continuous maintenance. Citizenship regulation becomes a tool of excluding the Russian minority connected with the Russian threat (or any other neighbouring country that is perceived as a threat).

In this dissertation, I propose that the imperative of continuous stateness maintenance extends beyond the postcommunist region. Although postcommunist countries may experience the threat more acutely and directly, the difference from other countries is more of degree and less of quality. The next concentric circle to which the concerns with stateness are relevant would be postcolonial countries. The feature that they share with postcommunist states is the fact that they have experienced foreign domination which they resent, and often have formed their identity in opposition to the aggressor. In maritime postcolonial countries the geographical proximity of the threat may not be as immediate as in Eastern Europe, but the threat is nevertheless continuously experienced, first of all through the need to assert themselves culturally and materially. In this context, the attribution and symbolic content of citizenship becomes important as a form of affirmative action, a way to redefine the colonial "us" vs. "them" in a normative mirror image.

The concentric circles through which I map my conceptual travel do not stop with countries that have concerns with stateness due to their experience of foreign domination. I contend that pressures of migration and globalization call into question the nation-ness

and stateness of virtually all the nation-states, including those that scholars of political regimes and transitions deemed to be fully established and unproblematic. With the increasing migration-related pressures, even the most established Western European and settler countries are not able to physically ensure the unassailability of their defined territory or the demos and have to contend with the symbolic boundaries of their nation-states. My suggestion is that, in this vein, one of the key constitutive elements of stateness, citizenship regulation, becomes the focal point of the continuous stateness boundary maintenance. Thus I extend my concentric circles of the applicability of the notion of citizenship as a stateness boundary maintenance regime across several types of states.

The hunch to focus on stateness came from the initial inquiry into the empirical data on the paradoxical case of Lithuanian dual citizenship, making this thesis truly a theory building exercise. I map out my steps in writing by tracing the role of stateness concerns in the development of Lithuanian citizenship regulation and in the public and politico-legal discourse on citizenship, demonstrating the pervasiveness of concerns with stateness. Afterwards, I test whether the notion of citizenship as a stateness maintenance regime indeed has comparative purchase across regions by reviewing citizenship regulation and discourse in different parts of the world. In the end, we can say that citizenship indeed is employed as a stateness boundary maintenance regime under various combinations of the conditions of possibility distinguished in my theoretical framework, which is developed in more detail in Chapter 1.

### *A Note on Methodology*

From the methodological point of view, this dissertation is an instance of using a deviant case for theory-building, or, to be more exact, for theory-refining purposes. The

Lithuanian case of dual citizenship challenges the premises of the mainstream citizenship studies regarding citizenship and the behaviour of emigration countries, and my goal is to explore how this case can help us refine and qualify those mainstream theories.

*Case study.* Case studies have a mixed reputation as a mode of scientific inquiry. Critics treat them as only suitable for exploratory research and plagued by a lack of generalizability, bias in case and method selection, lack of rigour, representativeness, discipline and formalization in research designs, inappropriate degrees of freedom, underspecified methodology, subjectivity from both the researchers' and the informants' perspectives, nonreplicability, and overdetermination (Gerring 2007; Hamel, Dufour, and Fortin 1993; Yin 2012). Proponents of case study research emphasize its utility in answering questions of how and why something happens and argue that it is in fact possible to be rigorous and explicit in case study methods and to produce analytical (not statistical) generalizable insights (Yin 2012: 5, 18, *passim*). They also point out the superiority of case studies when it comes to understanding the cognitive factors related to the actors in the case, such as norms and ideas, and to identifying the processes through which the cognitive framework takes place (Blatter and Haverland 2012: 6). Case studies are considered to be especially well positioned to ensure conceptual validity, creation of new theories, examination of causal mechanisms and causal complexity (George and Bennett 2005). The reprimand that case studies have many more potential explanatory variables than data points can be addressed by using multiple sources of evidence for triangulation (Yin 2009).

One of the main benefits of conducting case studies is that they lend themselves to modifications of the boundaries of inquiry, research questions and theoretical frameworks in the process of conducting the study (Stake 1995: 9, Yin 2012: 6). This characteristic

makes case studies especially conducive to theory-building exercises, and therefore especially suited for the purposes of this thesis. As Stake (1995: 1) notes, we are interested in cases "for both their uniqueness and commonality", which he denotes as an intrinsic vs. an instrumental case study, pointing out that case studies do not lend themselves to the imperatives of representative sampling and are in a sense pre-selected (which is what happens when one's study begins with a real-world puzzle, like this dissertation). Descriptive case studies have their place in social science as building blocks of the body of knowledge, but the more immediately relevant type of case studies are those that are more theory-oriented. More specifically, a case study can be interpretative and use existing theoretical frameworks to explain a particular case, assessing how satisfactory the existing theories are and offering ways to refine them, or seek to generate new or refine existing hypotheses (Vennesson 2008: 227-228). Yin (2003: 40-42) distinguishes several types of within-case studies: a critical case which tests a well-established theory; an extreme/unique case which represents a phenomenon too rare to allow for any cross-case research; a representative/typical case that aims to inform about the commonplace as it pertains to the phenomenon under study; a revelatory case where one can analyze a previously inaccessible phenomenon, and a longitudinal case whose primary objective is to specify the pattern of changes over time. This thesis falls broadly within the first type of case studies, which can also be called analysis of a deviant case. Deviant cases are an especially beneficial research strategy, since they are best positioned to highlight issues in the theoretical frameworks that can be overlooked when studying "typical cases" (Stake 1995: 3-4). Study of deviant cases can make significant contributions to the development of theories (George and Bennett 2005; Orum, Feagin and Sjoberg 1991). Case studies are

capable of providing analytical generalizations through a two-step process: first, demonstrating how the findings of a particular case study inform the theoretical framework, and, second, applying these insights to other situations where similar theoretical propositions may be relevant (Yin 2012: 18). The ultimate justification of the use of this case study in this dissertation is the use of its findings to revisit and refine the mainstream theoretical premises regarding dual citizenship.

In essence, a case study is a more territorially than temporally bounded form of cross-level inference (Gerring 2007), lending itself to research tools that trace developments over time. In my in-depth within-case analysis, I conduct process tracing of the development of the events that challenge the mainstream theories in order to tease out the potential building blocks that could help refine those mainstream theories. Process tracing is especially suited for theory-refining purposes, as it has both an inductive and a deductive element, and is becoming increasingly popular as a way to research the complexity of social causal mechanisms (Beach and Pedersen 2013; Bennett 2008; George and Bennet 2005). George and Bennet (2005: 224) go as far as to claim that process tracing is the only alternative to covariation when it comes to causal inference from observations. Unlike the variable-based approach to causality exhibited by quantitativists, process tracing looks at it in terms of the interaction of necessary and sufficient conditions that make the outcome under study possible, leading to "possibilistic generalizations" (Blatter and Haverland 2012). In fact, the use of process tracing as a supplement to cross-case large-N research is problematic, because it is possible that different mechanisms operate in different cases (Goertz and Mahoney 2012). This line of argumentation is based on the point that one should not judge within-case qualitative research using probabilistic criteria,

but rather appreciate the value of study of single cases as a tool for refining theoretical principles. In the study of deviant cases, process tracing proceeds rather inductively, but the eliminative character of this induction and the possibility to test the derived theoretical insights with data from different points in the process enables falsification efforts (Bennett 2008).

Therefore, I choose this approach as the most suitable way of addressing my main research questions: Why does Lithuania contradict the predictions of mainstream theories on citizenship? Which elements predicted by the mainstream theories are there and which are missing? What is Lithuania a case of? Are there discernable trends in the development of Lithuanian citizenship regulation? What are the main topics that figure in deliberations on dual citizenship? What is the role of international norms in the regulation of Lithuanian citizenship? How are they employed and by which actors? What is the relationship between citizenship and identity in Lithuanian discourse on dual citizenship? What insights can the Lithuanian case offer in terms of citizenship theories?

After refining my theoretical propositions based on the Lithuanian case data analysis, I turn to a comparison with a shadow case – South Korea – to assess how well those insights travel, but process tracing of the case of Lithuania forms the basis of this research project. The "fingerprints" of the identitarian and instrumental dimensions of citizenship and the influence of European integration that I am looking for in tracing the process of the development of Lithuanian discourse on citizenship include references to ethnic vs. civic identity in the politico-legal texts and identitarian claim making in the public discourse, invocation of international norms, the EU and "the West" by the judges, politicians and the public, and arguments about the instrumental benefits and pitfalls of

dual citizenship from an individual, a societal and a state perspective expressed in the public discourse. As this is a theory-building exercise, I am also looking for the elements that figure prominently in the politico-legal public discourse and yet are unaccounted for by the mainstream citizenship theories, which I eventually conceptualize as stateness.

*Sources.* The bulk of the data comes from archival research: the texts of the Constitution of the Republic of Lithuania and laws on citizenship; the rulings of the Constitutional Court of Lithuania pertaining to citizenship and protocols of public deliberations on those rulings; records of the working group which prepared the text of the Constitution of the Republic of Lithuania in 1990-1992; stenographs of parliamentary sessions in which the laws on citizenship were debated; public statements made by politicians, articles in Lithuanian media and public comments on those articles. My initial objective to balance archival research with ethnographic method of field interviews had to be curtailed due to the fact that most players of the case of Lithuanian dual citizenship were very aware of each other and the political sensitivity of the matter and either refused to give interviews or talked evasively, avoiding key questions and offering carefully qualified generic statements. Most regrettably, the Constitutional Court judges treat the rule that prohibits them from revealing the content of deliberations behind closed doors as effectively barring them from expressing personal opinions on the case and the discursive argumentation pertaining to the rulings. Therefore, insights based on interviews inform the interpretation of the material, but cannot be intensively quoted and properly attributed. Stone Sweet (2000) suggests that the unavailability of insight into the judges' deliberations preempts ideational analysis of judicial review in favor of strategic-interest based approaches. However, I adopt a broader view of what is relevant in this case, focusing on

the interactions between the legal and the political planes as expressed in publicly available discourse, which facilitates the investigation of the role ideas play and the ways in which they are deployed in the paradoxical case of Lithuanian dual citizenship.

The main tools employed in this analysis are discourse analysis of the arguments articulated in political debates, legal reasoning and public reactions to the regulation of citizenship, and content analysis of the rulings of the Constitutional Court of Lithuania. The political discourse is an especially propitious place to look for boundary production and inscription, as it provides the framework for social meaning (Larsen 1997). I analyze the public discourse on dual citizenship in Lithuania in order to address the question of whether dual citizenship can be taken to signify a decline, or, conversely, a reiteration of the national. Analysis of citizenship as legal status needs to be supplemented by a thorough understanding of the context that shapes the relevant legislation; after all, formalizing a rule is hardly the first or the last step in a contentious political process. Discourse analysis operates on the assumption that political language is not restricted to politico-legal documents and thus justifies the inclusion of media and public discussions into the analyzed material and a broader interpretation of the data (Larsen 1997). By treating individual utterances as societal products based on the assumption that, if that were not the case, the individual would not be able to communicate, discourse analysis makes it possible to partially overcome the limitation of not having direct access to the information about Constitutional Court judges' decision-making processes. To supplement discourse analysis, I also conduct content analysis, which helps to quantify the patterns of increasing/decreasing usage of certain terms in the development of citizenship regulation. Close analysis of the politico-legal texts and public discourse reveals the centrality of

'stateness' concerns in citizenship regulation, the ingredient that was missing in the mainstream accounts which the Lithuanian case challenged.

*Overview of the chapters*

This thesis consists of five chapters bookended by the Introduction and Conclusions. Chapter 1 presents the theoretical framework that my study sets out to challenge and qualify. Chapters 2, 3 and 4 present the empirical evidence of the case study, while Chapter 5 revisits and refines the theoretical framework and discusses the comparative implications of this study. Let us overview each chapter in more detail.

In the first chapter of the dissertation I review the literature that could be employed to explain the puzzle found in the Lithuanian case and point out the tensions that require closer examination. I begin by specifying the concept of citizenship and its contents as it pertains to this study, namely, the conceptualization of citizenship as composed of two mutually ambivalent clusters of elements: rights and duties of an individual on the one hand, and identity, membership, and participation in a political community on the other hand (Kivisto and Faist 2007). In other words, I proceed under the assumption that citizenship consists of the instrumental and the ideational dimensions. I discuss the liberalization/convergence hypotheses in citizenship studies and formulate the challenges to these hypotheses. The main focus of this study is on dual citizenship which can be used as a lens of inquiry into the substantive questions of citizenship studies, and particularly as a tool for in-depth testing of the liberalization/convergence hypotheses, due to the inherent ways in which dual citizenship highlights the tensions between the instrumental and ideational dimensions of citizenship. I discuss the concept of dual citizenship, its historical development, current debates in the world and their interpretations in light of the

liberalization/convergence hypotheses. In this chapter, I unpack the theories pertaining to dual citizenship regulation and formulate propositions which take into account the instrumental and ideational dimensions and enable us to evaluate whether certain developments in dual citizenship regulation could be interpreted as an indicator of liberalization and/or of convergence, and if yes, then in what direction. I tackle some of the central premises of citizenship studies; namely, the hypothesis that various countries are converging towards a more liberal regulation of citizenship, which views dual citizenship as one of the indicators of such liberalization and the European integration as the most advanced locus of such developments; and the assumption that dual citizenship is a harbinger of postnationalism and is increasingly favored by immigrant-receiving countries as a tool for immigrant incorporation, and by emigrant-sending countries as a tool for encouraging remittances and extending control over co-ethnics abroad. I address the idea that the European Union is, in a sense, an experimental laboratory where one can observe the liberalization/convergence of citizenship regulation and the development of postnationalism, and analyze the paradox wherein European integration both enables and subverts postnational developments in the concept and practices of citizenship. I also address the implications of European conditionality for citizenship regulation and discourse in postcommunist Central and Eastern Europe. I finish the first chapter by highlighting the tensions and gaps in the mainstream theoretical framework that could attempt to explain the Lithuanian case of citizenship regulation, leading to the need to delve into the empirical evidence in an effort to locate the "missing ingredient" of stateness that could bridge the aforementioned gaps.

In the second, third and fourth chapters, I turn to the empirical case of dual citizenship in Lithuania which challenges the mainstream assumptions and claims pertaining to citizenship regulation and provides a rich collection of material for the interrogation and refinement of the mainstream theories of citizenship. Although on the surface the critical junction of Lithuanian dual citizenship regulation appears to affirm the importance of international norms of nondiscrimination, if we want to be able to specify the effect, or lack thereof, of such norms channeled via European integration on citizenship regulation, it is not enough to look at the outcome that appears to confirm the effect and accept that as sufficient proof (George and Bennett 2005). Rather, a detailed process tracing of the development of Lithuanian citizenship discourse and its critical juncture allows us to distill the main conditions of possibility of such an outlier case.

In Chapter 2, I set the stage by overviewing the historical background and demographic facts of the Lithuanian case, focusing on its status as an ethnonationalist postcolonial emigration country, thus establishing its relevance as a deviant case. I trace the development of citizenship regulations, especially those pertaining to dual citizenship, from the inception of the modern Lithuanian state to the early 2000s. In addition to addressing the role of international norms and identitarian vs. instrumental dimensions discussed in Chapter 1, the discussion of the arguments and comments made by policy makers during the course of citizenship-policy-making (such as those found in the records of the working group who prepared the text of the Lithuanian Constitution) helps tease out the preliminary directions of inductive theory building by not only testifying to a strong ethnonationalist foundation laid into the conception of the Lithuanian state, but also

alerting us to the prominence of stateness concerns in citizenship regulation and an ambiguous relationship of Constitution crafters with international norms.

Chapter 3 focuses on the critical juncture in the development of Lithuanian citizenship regulation – the November 2006 Constitutional Court ruling which struck down both the pre-existing preference for ethnic Lithuanians and the widespread availability of dual citizenship, exposing a different configuration of the nexus between international norms of nondiscrimination and availability of dual citizenship than the trend towards liberalization predicted by the mainstream citizenship theories. I analyze the reasoning provided by the court in the text of its ruling and the reactions to the arguments of the Constitutional Court by the politicians and the public, recorded in the media pronouncements and legislative proposals on how to remedy the situation. Discourse analysis reveals the prevalence of the identitarian dimension in the discourse on citizenship over the instrumental concerns with dual citizenship, and traces the tense engagement with international norms of nondiscrimination, echoing the arguments laid out in Chapter 1. Furthermore, the arguments deployed in the citizenship discourse at the critical juncture help flesh out the importance of the concerns with stateness which we were alerted to by the data discussed in the previous chapter. This chapter sets the stage for the search for an explanation for the state's inability to act on the assertion of the primacy of the identitarian dimension of citizenship and overwhelming support for the restoration of the ethnonationalist dual citizenship regime.

Chapter 4 brings the discursive data into focus, discussing the major alternative explanations of the behaviour of the Constitutional Court. One of the alternative explanations suggests that the key to such a counterintuitive outcome lies in the effect of

international norms that push towards greater liberalization of citizenship regulation. Another alternative explanation claims that restrictiveness comes from the more instrumentalist dimension, suggesting that both the Court and the politicians were reluctant to open the door for the issue of restitution of Jewish property. Process tracing using the data gleaned through content analysis of legal documents shows that it is in fact the interaction of hegemonic norms with the fundamental stateness concerns that produces a paradoxical outcome. My work contributes to the advancement of ideational research by addressing the hypothesis of EU conditionality, which predicts a positive liberalizing influence on aspiring candidates for membership in the European Union. The research on international norms diffusion often fails to analytically disentangle genuine socialization and strategic reasoning, whereas the process tracing of the case of dual citizenship in Lithuania enables me to detect their differing expressions in the contentious citizenship discourse, especially how international norms are filtered in the judicial review. Content analysis of Constitutional Court rulings detects a slight shift from more ethnic to more civic argumentation over time, which would seem to lend partial support to the effect of norms, but since these two dimensions are not correlated in the Court's utterances, such a conclusion needs to be taken with caution. The main finding of the discourse analysis and content analysis of the Constitutional Court's rulings is the crucial and continuous reassertion of the primacy of stateness.

Chapter 5 discusses the comparative implications of the insights produced by the in-depth case study. I revisit the theoretical framework for explaining developments in citizenship regulations discussed in Chapter 1 by incorporating the insights distilled during the process tracing of the case study of Lithuania, concentrating on the analytical categories

of the role of international norms, the increasingly identitarian character of citizenship, and the importance of concerns with stateness. A discussion of relevant developments in other countries and a more in-depth comparison between Lithuanian and South Korean cases serves as an additional test of the utility of the refined theoretical framework.

In the conclusion I draw together the strands of arguments explicated in this dissertation that address the contemporary constellations of national identity vs. postnationalism in migrant citizenship regulation, summarizing the insights relevant to several clusters of social scientific research, such as European studies; postcommunist studies; studies in citizenship, migration, and nationalism; Constitutionalism; and ideational inquiry. I conclude that the understanding of citizenship as a continuous boundary maintenance regime engaged with external and internal existing or perceived challenges provides a more dynamic conceptualization than the dominant approach to citizenship regulation as a path-dependent phenomenon. Rather than adopting a path-dependent approach and focusing on ways in which current developments are shaped and limited by previous decisions and domestic political concerns foreclosing some paths and reemphasizing others, our understanding can be enhanced by shifting the focus onto the ways in which they are shaped by interactions with and reactions to the perceived others and otherness at the interface of the domestic and the international. Ultimately, citizenship is more about interaction than about path dependence, and is never really postnational.

## Chapter 1. Theoretical Framework. Dual Citizenship and the Liberalization and Convergence Theses in Citizenship Studies

In this chapter, I present the theoretical framework of my thesis. I discuss the concept of citizenship and the main approaches to the study of this phenomenon, focusing on the dominant trends in citizenship studies. I locate myself in this field of study and sketch out the theoretical argument advanced by the Lithuanian case of dual citizenship – namely, that citizenship regulation is affected by the conditions of possibility that include a simultaneous delegitimization and reiteration of the identitarian dimension of citizenship and a concern with stateness. Let me briefly overview the four main building blocks of my argument: the liberalization/convergence thesis, the unintended re-emphasis on the identitarian dimension of citizenship that is a result of the decoupling of rights and belonging, the purported influence of EU on Central and Eastern European postcommunist countries, and the relevance of stateness for the issues related to citizenship.

Citizenship can be conceptualized as consisting of rights and duties of an individual, or an instrumental dimensions, and membership in a political community, or an identitarian dimension. Most of the scholarship on citizenship has focused on the questions of rights. The postnationalist argument, on which the liberal convergence thesis that has dominated scholarship since the 1990s relies, posits that states are increasingly liberalizing access to citizenship and shifting the dependence of rights onto territorial residency rather than on belonging to the national community.

European integration has been perceived as the pinnacle of such postnationalist developments and as a liberalizing influence that lessens the ethnonationalist orientations of postcommunist Central and Eastern European states. I argue that both these premises should be reconsidered. First, when rights are increasingly decoupled from citizenship, the

identitarian dimension of citizenship gets unexpectedly reinforced, which stands in tension with the hegemony of international norms of non-discrimination, thus rendering the EU a much less straightforwardly liberal environment. Second, the postcommunist countries can be perceived as postcolonial states that have experienced foreign domination and thus are concerned with their stateness, whereas statehood has been taken for granted in the case of the Western states that have served as the basis for the development of most scholarship on citizenship. Due to such postcolonial anxieties, the international norms can be used subversively in CEE countries, not necessarily in favour of greater liberalization, but for restrictive purposes. Furthermore, increasing migration and the resulting actualization of citizenship acquisition actually exert pressure on the heretofore unquestioned stateness of Western countries.

When a country is concerned with stateness, citizenship becomes a continuous statehood and nationhood boundary maintenance regime. Dual citizenship is an especially useful tool for the analysis of this boundary maintenance. Dual citizenship has mostly been seen as an indicator of postnationalism due to the focus on immigrant-receiving countries and the instrumental dimension of citizenship, whereas dual citizenship for emigrants has been understood from the perspective of nationhood, but has remained on the margins of citizenship theory. However, if we focus on the contents of the discourse on dual citizenship, the ultimate concern with this maintenance of the boundaries of statehood and nationhood is evident in both countries of emigration and immigration, reinforcing the argument that citizenship has become more and more about identity. In the following sections, I expand on each of these points in greater detail.

*Citizenship studies: trends and challenges.*

The concept of citizenship has been analyzed since Ancient Greece, but its meaning is still multifaceted and contested. Most scholars see citizenship as a complex phenomenon composed of several dimensions. The enumerations of these dimensions vary; however, there is a certain overlap among the main constitutive elements of the concept of citizenship. Most authors distinguish citizenship as active participation vs. citizenship as a set of rights and duties vs. citizenship as identity and belonging (Bauböck 1994; Heater 1999; Heater 2004; Kivisto and Faist 2007). For the purposes of this thesis, the analysis of citizenship as active participation in the life of a polity is bracketed and the main focus falls on the interlocking rights-duties and identity-belonging dimensions of citizenship, which can also be conceptualized as the instrumental vs. the identitarian dimensions. Citizenship studies in the past two decades have increasingly focused on the former and pronounced the latter to be decreasing in importance, an approach that can be summarized as the liberalization/convergence thesis, which is challenged in this paper.

*1.1.1. Liberalization/convergence thesis.*

One of the main characteristics of social scientific inquiry in the past several decades has been a focus on the question of a relative decline of the exclusivity of political membership in a nation-state. Its most concise expression in the field of citizenship studies can be found in the so-called twin theses of liberalization and convergence. The convergence thesis states that the changes in citizenship regulation across countries are bringing the legislation closer to a common denominator, and the liberalization thesis specifies the direction of this convergence towards greater inclusion (Aleinikoff and Klusmeyer 2001; Bauböck 2006; Howard 2009). By examining each of these arguments in

turn, we can extract the potentially testable elements of the liberalization/ convergence thesis.

The hypothesis of convergence centers around the claim that citizenship regulations are becoming increasingly similar across countries (Aleinikoff and Klusmeyer 2002; Hansen and Weil 2001). The notion of convergence has been mostly developed in relation to Europe, although some studies point towards certain trends that are bringing European regulations closer to those characteristic of traditional immigration states, such as USA or Australia (Joppke 2010).

Different authors provide different explanations as to which factors mostly contribute to the convergence of policies and legislation. On the one hand, we encounter the arguments that similar historical developments have put various countries into similar positions and thus lead to similar solutions despite their initial differing conceptions of nationhood. They key development that is pointed out as leading to such convergence is the presence of a large number of foreigners resulting from migration (Faist and Ette 2007). As we can see, the main argument for the convergence thesis rests squarely on the perspective of immigrant-receiving countries. An increase in the number of countries that simultaneously experience immigration and emigration pressures, such as those participating in the Eastern enlargement of the European Union, provides an opportunity to inquire into the extent of the applicability of the convergence thesis beyond the core immigration countries.

On the other hand, we have those who emphasize the normative aspect of the developments of citizenship regulations. This strand of argumentation also relies heavily on the analysis of the experience of the EU countries. The normative influence of the

European institutions is not limited to the vertical imposition evident in the conditionality of accession for new members; it is crucial to recognize the dynamics of horizontal learning between countries (see Bauböck *et al.* 2006; Maatsch 2011; Vink 2005). In this dissertation, I trace both the role of the diffusion of ideas and the role of historical developments via discourse analysis of discussions and deliberations pertaining to dual citizenship in Lithuania.

The proponents of the convergence hypothesis, even when they acknowledge certain restrictive tendencies, claim that citizenship, at least among the 'developed' countries, is "converging on a liberal model of inclusive citizenship with diminished rights implications and increasingly universalistic identities" (Joppke 2010: vii; see also Castles 2005; Kivisto and Faist 2007). This can be identified as the "liberalization" component of the convergence/liberalization thesis. In short, this thesis entails three constitutive claims – that citizenship is becoming more inclusive and liberal, that rights are increasingly disassociated from the status of a citizen, and that the identities associated with citizenship are moving in the direction of universalism. In order to establish what "fingerprints" to look for in the discourse on Lithuanian citizenship, first it is necessary to unpack the foundations of the liberalization/convergence thesis.

*1.1.2. Citizenship and national identity.*

In an influential study that revitalized scholarly interest in citizenship, Brubaker (1992a) posited that states can be characterized by distinct citizenship regimes underpinned by distinct conceptions of nationhood. He identified a civic (*ius soli*) and an ethnic (*ius sanguinis*) citizenship regime, distinguished by a different emphasis on the relationship between a state and a descent group that forms the basis of its population, but, for our

purposes, his most important contribution lies in emphasizing the fundamental imbrications between citizenship as membership in the state, on the one hand, and national identity, on the other.

Brubaker's thesis has been widely referenced in virtue of being one of the foundational arguments of citizenship studies, but it has received widespread criticism in light of the developments in citizenship regulation in the past couple decades (see e.g. Joppke 1999; Weil 2001). Criticism focuses on the changes in citizenship legislation in the countries that Brubaker studied, pointing out that in Germany, which was said to present as an archetype of ethnically conceived nationhood, the 1999 changes in the citizenship law significantly expanded the rights to citizenship for migrants of non-German ethnicity, and that France, which was presented as an archetype of civic citizenship, took a restrictive turn in the 1990s (Hansen and Weil 2001). Such changes purportedly indicate the limited validity of Brubaker's claim of the fundamental importance of the conceptions of nationhood, citing mass migration and developments in human rights norms as the main factors undermining the continuing relevance of national identity traditions. The nexus between citizenship status and national identity has been increasingly challenged by claims that in the globalized world, characterized by increasing flows of migration, descent-based conceptions of citizenship are delegimitized and are giving way to civic orientations that do not rely on the correlation between the dominant ethnic group and the political community in apportioning political membership (Kaufmann 2000). The next section discusses the main ways of conceptualizing these changes in the nexus between a state and a nation.

*1.1.3. Erosion of the nexus between a state and a nation?*

Two main approaches that aim at conceptualizing the disintegration of the relationship between state and nation can be labeled 'postnationalism' and 'multiculturalism'. Both of them combine normative and empirical scholarship, heralding a shift toward greater inclusiveness on the part of the state, but differ in the ways this shift is envisioned.

*1.1.3.1. Postnationalism.* Some authors (e.g. Cohen 2009: 172) claim that the founding postnationalist argument can be traced to Habermas (1990) and his deliberative democracy stripped of ethnonational connotations. Others have connected postnationalism with the notion of transnational citizenship, focusing on the experiences of migrants that operate in more than one national milieu (Basch, Glick Schiller and Szanton Blanc 1994; Liebert 2005). However, the key text in citizenship studies that established a more empirically-grounded and state-oriented argument that we live in the age of postnationalism belongs to Soysal (1994). She built on an incipient awareness among the students of citizenship of the increasing divorce between rights and belonging. Calls for such dissociation were prompted in the 1980s by the necessity to accommodate increasing numbers of migrants who for various reasons did not or could not pursue host country citizenship (Silverman 1991). Hamar (1990) even popularized a term "denizenship" to designate those who lack official citizenship status but are effectively granted many of its rights.

One of the main developments that is presented as an indicator of postnationalist developments is the aforementioned trend among numerous countries towards increasing liberalization of citizenship regulation and the lessening of the logic of exclusivity in its

attribution, discussed here as the twin convergence and liberalization theses (Bauböck 2006; Howard 2009). The decline of the relevance of the membership in a nation-state is grounded in a combination of the increasing availability of dual citizenship, recognition of international norms and various rights for noncitizens (Sassen 1996; Sassen 2008: 278). Such rights are usually defined in non-discriminatory terms and are thus at least nominally divorced from culturally specific characteristics of their subjects, even if the actual implementation may vary (Koopmans 2012). Causal explanations for the increasing availability of rights for noncitizens vary from domestic (such as partisanship, political mobilization of immigrants, and delegitimization of xenophobia) to international factors (Guiraudon 1998). As Shafir and Brysk (2006: 275) note, the international conception of human rights has taken over citizenship as the main reference point for legal rights. Such postnational developments stand in stark contrast to the fundamental importance of state membership as "a right to have rights", as identified by Hannah Arendt (1973: 296) after the World War II and the Holocaust. Postnationalism sees the decoupling of rights and citizenship status as the main indicator of the decline of relevance of the nation-state and kindles the imaginings of the possible political formations whose coming into being we are witnessing, epitomized in the European Union integration (Jacobson 1996; Soysal 1994).

It is important to point out that a substantial part of the postnationalism arguments focuses on the rights that are afforded to migrants based on their residence, rather than on the legal status of citizenship. On the one hand, the expansion of denizenship (Hammar 1989) makes a strong argument for the importance of the role of international norms of human rights in the decoupling of rights and citizenship status. On the other hand, by placing the focus squarely on the rights that are less closely knit with the legal citizenship

status, the postnationalist approach overlooks the importance of the concomitant changes in the content of the status of citizenship. The contribution of this dissertation is to bring into sharper focus this other side of the rights/status nexus by exploring what happens to citizenship once it is decoupled from rights. My argument is that these developments lead to the strengthening of the identitarian aspect of citizenship, expressed in both its discursive contents (analyzed in Chapters 2, 3, 4) and in the developments pertaining to the requirements that an aspiring citizen is expected to fulfill (Chapter 5).

Soysal (1994: 3) equates postnational citizenship with conferring "upon every person the right and duty of participation in the authority structures and public life of a polity, regardless of their historical or cultural ties to that community." Such a definition directly implies a relative decline of ethnically biased ascription of membership in the body politic, which finds an even more direct expression in multiculturalist theories.

*1.1.3.2. Multiculturalism.* The concept of multiculturalism can be approached as (1) a *de facto* statement of increasing diversity in societies, especially as it pertains to immigration; as (2) a normative invocation of a positive response to such diversity; and (3) specific policies aimed at acknowledging and accommodating or even promoting diversity, such as special provisions for minority rights and curtailment of political expressions of a dominant culture (Crowder 2013; Holtug, Lippert-Rassmusen and Lægard, 2009). Multiculturalists focus on the increasing ethnic and cultural diversity within states and associate it with a lessening of the homogenizing impulse inherent in nation-states in general and in citizenship regulation in particular (Kivisto 2002). For the purposes of this paper, we can bracket the first two dimensions of multiculturalism and the related debates about positive and negative implications of potential reification of cultural groups at the

expense of individual freedom, segregation, etc., and focus on the third element – multicultural policies.

Some of the specific expressions of multicultural policies include passing extensive anti-discrimination measures, recognition of more than one state language (Coulombe 2000), providing a more diverse representation of national history in education curricula instead of presenting the perspective of the dominant cultural group as a unified front of a national stance (Carstensen-Egwuom and Holly, 2011), accommodation of different religious practices, such as allowing ritual slaughter of animals or wearing traditional headgear, institutional channels for taking into account minority positions, 'sensitivity training' for public officials, and providing state funds for minority cultural activities (Vertovec 1998). When it comes to citizenship regulation, the main multiculturalist concern is to disassociate citizenship from the elements of the dominant culture and enable all members of the polity to participate in the body politic (Kymlicka 1996). This requires a national identity centered around political institutions rather than ethno-cultural elements, and an acceptance of minority claims as no less legitimate than those of a titular nation (Parekh 2000: 231-234). Multicultural citizenship policies are grounded in a combination of cultural pluralism and a civic-territorial approach to an individual's belonging to the state (see Koopmans et al. 2005 for the classification of citizenship regimes on the cultural pluralism-monism and ethnic-civic dimensions). According to multiculturalists, those citizenship policies that claim to be 'colorblind' are frequently tacitly assimilationist, whereas preferable policy would be one which consciously and actively seeks to provide the necessary conditions for different cultures to flourish (Kymlicka 1996).

Multiculturalism requires the state to aid immigrant integration without assimilation (Bloemraad 2007; Bloemraad, Korteweg and Yurdakul 2008).

While post-nationalists proclaim the declining relevance of citizenship due to the availability of rights for non-citizens, in contrast, citizenship becomes crucial for multiculturalists as the main characteristic that is common to all the different members of the state and the key conduit through which members of different cultural groups can operate. In order to fulfil this function, access to citizenship cannot be dependent on the cultural identity of those who seek to gain it. Thus, while multiculturalism places greater emphasis on the legal status of citizenship as a necessity for political incorporation, we come full circle to the initial statement that both postnationalism and multiculturalism rely on the premise that belonging to the titular nation is becoming less relevant for migrant incorporation and participation in the body politic.

Although multicultural policies appeared as a reaction to immigration, multicultural theory has been built by referencing not only migrants, but also autochtonous national minorities (Kymlicka 1996; Kymlicka 2007a). This duality of the targets of multiculturalism is especially relevant for this thesis, providing an integrative background for my inquiry into the role of international norms of nondiscrimination in the development of the citizenship policies and public discourse in Lithuania where mostly Slavic immigrants and national minorities inadvertently overlap. In fact, Kymlicka (2007b) claims that much of the international norms regarding minorities have been developed and instituted precisely in relation to postcommunist countries. The notion of the impact of such norms on CEE countries through the pressures and conditionality of membership in

the European Union and other Western organizations is briefly overviewed below and analyzed in more detail in Chapter 4.

*1.1.4. European Union as the laboratory of postnationalism*

The main arguments in favour of the decline of the relevance of the nation-state and for the liberalization/convergence thesis have been drawn from the experience of European integration. The creation of supranational institutional framework that started as a European Coal and Steel Community after World War II and became the European Union in 1993 is intimately related to the attempts to prevent international hostilities which had been a hallmark of life in Europe for hundreds of years and culminated in genocide. Such background set the stage for the hegemony of anti-discriminatory norms and inter-cultural tolerance as some of the key aspirations of European integration. The 1957 Treaty of Rome which established the European Economic Community proclaimed in its preamble the determination to "lay the foundations of an ever-closer union among the people of Europe".

According to theorists of postnationalism, the integration of Europe into an 'ever-closer union' has spearheaded transnational developments in the increasingly globalizing world (Soysal 1994). Hopeful post-nationalists see the EU as an incubator of progressive trends and give them evocative labels, like a "demystification of state sovereignty" (Keating 2006: 24), "a new medievalism" (Koslowski 2000: 155), or simply see it as a factual negation of exclusivity of loyalties (Hansen and Weil 2002: 7). For the purposes of this paper, we need to concentrate on three main aspects in which European integration speaks to the arguments behind the liberalization/convergence hypothesis: the characteristics of the common European space as it pertains to free movement of an

individual, the policy convergence vector, and the relationship between the EU and ethnonational communities.

*1.1.4.1. Common market and freedom of movement.* The principal development in the EU has been the market integration, epitomized in the four freedoms – free movement of goods, capital, services and people. These freedoms have reconstructed the way a state, a cultural community and an economy relate to each other, and have removed territoriality of a nation-state as the prerequisite and boundary mechanism for such interactions (McGarry et al. 2006). Within the framework of this thesis, the most relevant freedom is the free movement of people. The most visible aspect of the freedom of movement is the Schengen area – the possibility to move between countries with merely a signpost signifying that you have crossed a national border; however, the key implications of the principle of free movement of persons go beyond tourism. If a person is a citizen of any of the member states (with certain delays in regard to new members), s/he can move freely, find work and establish domicile anywhere in the EU and is granted numerous social, and even political, rights (e.g. voting in local and European Parliament elections).

Free movement of persons is often proclaimed to be among the most important foundational features of the EU, but it faces a backlash from countries like the United Kingdom due to an increase of Eastern European immigrants. The established freedom of movement precludes national governments from instituting effective limits on intra-EU migration beyond transitional periods imposed on new member states that last no more than 7 years. Every year there are more and more people who are citizens of one European country, but live and work in another, pay taxes there and receive public services, and are even able to vote in local and European Parliament elections in the place of their domicile.

Possible overlap of government functions is resolved among states in ways that enable people to receive social security payments wherever they go, etc. Through such developments, European integration has posed the most veritable challenge to the trinity of state functions, territory, and the people. These correlatives of the free movement of persons serve as the springboard for postnationalist arguments about the increasing availability of various rights previously associated with citizenship for people who are not citizens of the country in which they currently reside. This argument speaks to the liberalization dimension of the liberalization/ convergence hypothesis.

*1.1.4.2. Policy convergence.* Another feature of the European Union that is directly related to the liberalization/convergence thesis is policy convergence. The EU has a unique governance structure, and one of its key characteristics is a division of competences among different levels of government. Some policy areas, like customs, competition, trade, and Eurozone monetary policy, are under exclusive EU competence, where decisions are made and enforced by its supranational institutions like the European Commission and the Court of Justice of the European Union. In contrast, other areas, like education or taxation, are firmly under the responsibility of the member states. A large part of policy areas ranging from agriculture and consumer protection to external relations and research and development are considered to be shared competences, becoming a continuously evolving amalgam of supranational and national regulations. From these common policies comes one of the fundamental features of the EU – *acquis communautaire* – the accumulated body of law, regulations, directives, etc., that each member state must fully accept and implement unless it negotiates a specific opt-out. However, there is a certain tendency towards harmonization of regulation (based on the principle of mutual recognition rather

than uniformity) even in the areas where the member states are not compelled to do so. Such an inclination makes sense in the context of the common market, but the creation of the common European space has a spillover effect on other policy areas beyond economic integration. The creation of the Schengen area and the principle of the free movement of persons have created such a spillover effect in the need for coordination of asylum, migration, and policing issues, and for stronger control of external borders of the EU.

Citizenship attribution falls under strictly national competences, but migration issues are a part of a shared competence policy field known as the Area for freedom, security and justice (dubbed by less benevolent commentators as "fortress Europe", where the effort to ensure the freedom, security and justice for the European citizens goes hand in hand with striving to keep out unwanted migrants). Considering that migration control is another side of the coin of citizenship policies, this combination of different competence regimes allows us to approach the notion of convergence as a question rather than as a premise, although the need to coordinate asylum and migration policies has been cited as the main argument in favour of the convergence element in the liberalization/convergence thesis (Faist and Ette 2007). In Chapter 5 I discuss the indicators of convergence in citizenship regulation in the EU in more detail.

*1.1.4.3. Decoupling people and territory.* The previous two sections indicated how European integration has been used as a foundation for the liberalization/convergence thesis due to the decoupling of rights and citizenship related to the freedom of movement and the functional fusion of the common European space. Yet these developments have not been matched by a fusion of identity. My claim is that, on the contrary, divergence of

state membership and various rights and duties has inadvertently emphasized the identitarian aspect of the former.

European Union provides a space that allows the nation to be reconceptualized as a non-spatial cultural community (Keating 2006: 28) and thus decouples the state and 'the people', adding another layer to the decoupling of certain packages of rights and duties from citizenship (Faist 2000: 333). Here we encounter the fundamental tension between territoriality of the state on the one hand and the collective identity that does not have to be territorially circumscribed (but does not negate the existence of a territorial base (Keating 2006: 30)). Such collective political identity is ultimately tied to the nation-state as the epitome of political organization, although its longings are misdirected. The state is an instrument of inclusion and not a guarantor of belonging (Badiou 2006: 107), whereas this "sense of belonging", as separate from legal status, rights, and duties (Faist 2000), is precisely what is at stake in many current debates on citizenship. If we recognize that the viability of political identity is based on the strength of association between actors (Agnew 2003: 224), European integration has not yet overcome pre-political ascriptive criteria for citizenship (Schmidtke 1998: 61). The warning that familiarity may breed contempt, and that "extra knowledge of other peoples, through widespread and frequent travel or foreign domicile, may lead to a hardening rather than a softening of the very nationalistic or ethnic dislikes" (Heater 1999: 150), seems to be playing itself out in the 'ever closer union' as well as on the more global scale, when identitarian clashes are coupled with social tensions (Rosenfeld 2010: 234). If the European Union is "the framework for multiple *demoi*, themselves constitutive, along with the state, of a larger political community" (Keating

2006: 33), ethnonationalism would seem to be the premier candidate for a basis of such *demoi*.

In the years following the terrorist attacks of 2000s, there has been a growth in literature that recognizes the relevance of identitarian concerns for migration, mostly viewed through the lens of security. My dissertation extends the understanding of the scope of this relevance by bridging the gap between the literature that analyzes migration concerns of the Western countries and the literature that focuses on the situation of autochtonous and kin-state national minorities in the postcommunist world, demonstrating the intermeshing of migration as the issue *du jour* on the political agenda in post-communist countries of Central and Eastern Europe with long-standing issues concerning the security and national identity of what some may consider a postcolonial relationship with some of the neighboring countries.

My thesis is that the conundrum of Lithuanian dual citizenship is a product of the paradox of the long-sought-after membership in the EU which delegitimizes ethnicity as a criterion for citizenship and at the same time effectively reinforces identitarian impulses in the citizenship discourse via the decoupling of people, rights, and territory brought about by the institutionalization of the common European space (see McGarry and Keating 2006). Dual citizenship is especially conducive to testing this proposition, as evidenced by the contrast between the mainstream conception of dual citizenship as "a deliberate strategy to protect various rights in multiple states" (Faist 2000: 278) on the one hand, and Lithuanian migrants' demands for dual citizenship in a situation where those rights are already protected courtesy of the common European space. In the next subsection, I dissect

the phenomenon of dual citizenship and highlight its relevance in testing the liberalization/convergence thesis.

*1.1.5. Dual citizenship as the litmus test of postnationalism*

Dual citizenship can serve as a litmus test of the liberalization/ convergence thesis for two reasons. First, the expansion of availability of dual citizenship in a country is considered to be one of the key indicators of liberalization, and such expansion across several countries could be considered an indicator of convergence, therefore, accounting for the changes in formal regulations pertaining to dual citizenship is important for my research and is further discussed in Chapter 5. However, as I mentioned earlier, it is crucial to explore not only formal rules, but also the substantive content attributed to citizenship. Therefore, dual citizenship is especially conducive for inquiry into liberalization, since membership in more than one state multiplies the mutually ambivalent dimensions of citizenship as rights vs. identity, consequently exposing the ambiguities in the nation-state-citizenship nexus. In this section I explore the development of the constellations of these ambiguities.

*1.1.5.1. From prohibition to tolerance of dual citizenship.* It is no accident that after one major study devoted exclusively to dual nationality (Bar-Yaacov 1961) was published, it took several decades before literature focused on dual/multiple citizenship began proliferating (Hansen and Weil 2002, etc.). Although dual citizenship has existed since antiquity because of mobility of individuals (Heater 2004), the modern states have viewed it as an anomaly to be avoided and minimized, a position entrenched in numerous international conventions and treaties during the most of the 19th and 20th centuries (Koslowski 2001).

The Hague Convention of 1930 instituted certain guidelines for dealing with cases of dual citizenship, namely, the principle that a citizen cannot ask one state for diplomatic protection from another if s/he is a citizen of both of them, and the principle of 'effective nationality', which gives precedence to the place of primary residence (Heater 1999: 119). The 1954 Convention Relating to the Statelessness of Persons acknowledged that every person is entitled to a nationality, but only to one (Koslowski 2001: 207). Here we already see the language of individual rights taking over what heretofore had been viewed from the standpoint of states. The European Convention on Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality, concluded by the Council of Europe in 1963, was the pinnacle of the attempts to limit the instances of dual citizenship (Brubaker 1989: 173). Yet, enforcement of the convention was impeded from the start by the lack of exchange of information between states on changes in citizenship status of an individual (Hammar 1989: 83). Eventually the disposition changed, increasingly viewing the prohibition of dual citizenship as simply wrong, both because of the realities being quite otherwise, and because of the dissemination of progressive ideas (Checkel 2001: 55-56). The 1997 European Convention on Nationality refrains from expressing negative judgment on the desirability of the phenomenon of multiple nationality (Council of Europe 1997), and amendments to the previous Convention even call for its application in the name of spouse equality (Council of Europe 1994). Such developments towards greater tolerance of dual citizenship are considered to be one of the indicators of the trend towards liberalization.

Still, dual citizenship is celebrated by only a handful of enthusiastic thinkers (e.g. Spiro 2002) and merely "tolerated", if that, by nation-states. In a world where every citizen

belongs to a particular state, the issue of conflicting loyalties, rights and duties is raised in both ideological and pragmatic terms, concerning not only the military service and diplomatic protection, but also questions of application of conflicting laws in areas of taxation, property, inheritance, family, and the like, as well as questions of violation of the principle of equality in the sense of having more than one vote and not necessarily being subject to the consequences of one's voting decisions, to reverse Benhabib's (2004: 217) statement that "those who are subject to the law should also be its authors".

Despite all ambiguities, today more than a half of the sovereign states of the world accept some sort of dual citizenship (Faist and Kivisto 2007; Renshow 2005), with scholars increasingly calling for its management rather than prevention (Aleinikoff and Klusmeyer 2002). The main reason behind the proliferation of dual citizenship is an uncoordinated variety of state citizenship policies (*ius soli*, *ius sanguinis*, and combinations thereof) combined with large scale migration and the expansion of human rights, particularly those related to gender equality, demolishing the traditional primacy of a husband's citizenship over that of the wife's. A child born in a country that applies the principle of *ius soli* to foreign nationals of countries which apply the principle of *ius sanguinis* could have a triple citizenship. Although many countries have special provisions for such a child to choose his or her citizenship at majority, not all possible situations are covered.

In the face of the advancement of volunteer military service instead of conscription, increasing world interdependence, and the development of NATO and the EU in particular, the "probability of multiple loyalties being put to the test in war has decreased" (Koslowski 2000: 141). The common space of the EU seems to negate any reservations about compatibility of multiple citizenships or the "physical impossibility of performing

simultaneously the rights and duties of citizenship in different geographical locations" (Bar-Yaacov 1961: 265). Scholars point out that, as a practical matter, the imperative for countries to ensure the exclusive loyalty of their citizens has been weakening. However, the recent heightening of security concerns related to the scare of terrorism allows us to question this assumption. While the aversion to statelessness appears to have rendered the stripping of a citizenship of an individual by a state increasingly obsolete, the situation is fundamentally different when it comes to a dual citizen. In fact, the practices and regulations of dual citizenship bring into sharp focus the precariousness and conditionality of the link between a person and a state, opening the possibility of a top-down severance of this link based on the estimation of loyalty and fidelity (see e.g. Guild 2009). The discussion of the case of Lithuania in the subsequent chapters demonstrates the unceasing relevance of the questions of threas to state interests even when terrorism is not in the picture.

*1.1.5.2. Interrogating dual citizenship.* Notwithstanding the attempts to dismiss the relevance of the questions of loyalty of dual citizens, public discussions on dual citizenship tend to focus on the questions of identifying with the political community of the state. Borrowing from an anecdotal exchange between the prime minister of India and the head of the Indian-American community (cited in Avila 2002), those who see citizenship primarily from the perspective of the state tend to frame it as a thesis "no one can serve two masters", whereas those who see it from the perspective of an individual claim that "one loves both one's father and one's mother".[1] As Ong (1999: 2) puts it, "the multiple passport holder is an apt contemporary figure; he or she embodies the split between state-

[1] Both phrases have been explicitly invoked by participants of the debate on Lithuanian citizenship.

imposed identity and personal identity caused by political upheavals, migration, and changing global markets".

It is widely presumed that the pressure on states to accommodate the reality of increased migration and recognize "multiple forms of belonging" (Carens 2000: 161) has led to the widening of *de facto* and even *de jure* possibilities of dual citizenship. Scholars generally assume that receiving countries relax the prohibitions of dual nationality in hopes to facilitate integration of immigrants, and emigration countries favor dual citizenship as a means of maintaining the ties with their co-nationals (see e.g. Kofman and Youngs 2003; Koslowski 2000). More specifically, emigration countries are expected to (1) institute dual citizenship as a reaction to previous actions by immigrant-receiving countries, (2) apply it asymmetrically – only to their conational emigrants and not to immigrants, (3) use dual citizenship in efforts to influence border-crossing social formations, and (4) not revoke or restrict dual citizenship once it has been instituted (Faist 2007: 5-6). The case of Lithuania, which is undoubtedly an emigration country, is interesting and worth investigating precisely because it does not neatly confirm any of these presumptions, questioning previously allowed dual citizenship and having immigrants also figure in debates which are nationally initiated and framed, and the role of the state is especially convoluted in that it is far from a unitary actor in this situation.

The contradictions exposed by the seemingly outlier case of Lithuania allow us to delve into the fundamental aspects of the relationship between the phenomenon of dual citizenship and the "analytical and normative nationalism" (Bosniak 2006: 5) that underlies citizenship studies and needs to be informed by empirical investigation. The question is whether dual citizenship could be an indicator of liberalization of citizenship regulation,

and it can be answered by exploring whether deploying dual citizenship can be taken to signify the lessening of the emphasis on national identity in the discourse and practices of the nation-state. Posing the question in such terms also serves as a way to overcome the frequent binary compartmentalization of dual citizenship as a tool of immigrant incorporation and as an instrument of maintaining connections with emigrants, and to bridge the divide between clusters of citizenship studies situated within- or outside- nation-state boundaries (Bloemraad, Korteweg, and Yurdakul 2008). Bauböck (2010) suggests that we should overcome that divide by studying citizenship constellations – the ways in which countries react to each other's actions in citizenship regulation. I suggest another possibility – inquiring how both the identitarian and the interest-based dimensions of the discourse on dual citizenship are relevant to both sides of this somewhat schematic divide between immigration and emigration countries, and explore their expressions in the Lithuanian case (Chapters 2, 3, 4) and in the broader comparative context (Chapter 5).

My position questions Faist's (2007) claim that dual citizenship debates in European countries indicate a shift from preoccupation with nationhood to concern with societal integration. Revisiting such notions and exploring the discourse on dual citizenship should demonstrate the inseparability of societal integration from the notion of nationhood. The thesis that posits a convergence towards greater liberalization of citizenship is only partly addressed by studies that focus on legal developments; the content of regulations and the motives that underline them are crucial for establishing whether citizenship regulation actually is more liberal and characterized by greater inclusiveness.

When it comes to emigration countries, their preferential treatment of co-ethnic emigrants in citizenship regulation is an accepted postulate of citizenship studies, thus dual

citizenship for emigrants is not truly an indicator of liberalization, only equal access for both emigrants and immigrants would fulfill that condition. However, the availability of dual citizenship for immigrants has been axiomatically treated as one of the key indicators of liberalization. Instead, I suggest that, if the state connects dual citizenship with an explicit goal of facilitating immigrant assimilation, as evident in the recent shift towards an emphasis on more substantive integration requirements for naturalizing immigrants, it should be seen as a reaffirmation, rather than a negation, of the fundamental role of national identity in relation to citizenship. I believe that discursive data is crucial in this inquiry: if one familiarizes oneself with the arguments pertaining to dual citizenship in the debates surrounding the 1999 citizenship reforms in Germany, one would be hard pressed to see it as an unambiguous indicator of liberalization and inclusivity, even further undermined by the subsequent introduction of naturalization tests in 2006. Therefore, a large part of my empirical research centers around public discourse analysis.

The proliferation of literature on dual citizenship in the past decade has not produced significant changes in the mainstream hypotheses it offers to political scientists, namely, the claims that immigrant-receiving countries relax the prohibitions of dual citizenship in hopes of facilitating integration, and that emigrant-sending countries favor dual citizenship as a means of maintaining ties with their expatriates. More than half of the countries today tolerate some form of dual citizenship due to the aforementioned combination of an uncoordinated variety of state citizenship policies, large scale migration, a decrease in the likelihood of putting competing loyalties to the test, and the expansion of human rights (Howard 2005; Koslowski 2000; Kivisto and Faist 2007; Renshow 2005). However, a lack of hard quantitative data on the numbers of dual citizens limits a major

part of literature to discussions of potential benefits and dangers of dual citizenship and its un/desirability (Bar-Yaacov 1961; Hammar 1989; Hansen and Weil 2002; Martin and Heilbronner 2003; Renshow 2005). My study demonstrates the utility of using dual citizenship as a lens in conducting empirical inquiry into the substance of citizenship regulation beyond quantitative indicators or metanormative argumentation. If we want to be able to advance the understanding of the content and significance of dual citizenship, we need to be able to go beyond acknowledging the determining role of path dependency in shaping each country's approach to dual citizenship (Faist, Gerdes, and Rieple 2004; Faist 2007). Howard (2005; 2009) attempts to formulate comparatively applicable categories in relation to the broader issue of liberalization vs. restrictiveness of citizenship regimes, and claims that the availability of dual citizenship for immigrants rather than emigrants should be conceived as an ultimate indicator of inclusivity of citizenship policy (Howard 2009: 24-26). However, I argue that this dichotomization obscures the underlying common denominators characteristic of countries' concern with dual citizenship. If we look closely at the discourse on dual citizenship for either emigrants or immigrants, we will find that both of them espouse similar lines of argument, boiling down to questions of identity, loyalty, and assimilation, thus bringing us back to the initially discredited claim of the close relationship between the regulation of citizenship and the identitarian conception of the political community. In this respect, it is especially beneficial to conduct a case study of a country in which both the questions of dual citizenship for emigrants and for immigrants figure in debates on citizenship regulation. Furthermore, the benefits of studying a new member of the EU lie in the possibility of questioning the stereotypical divide between an 'ethnic' and restrictive 'East' and a 'civic' and liberal 'West'.

If any practical considerations pertaining to contradictions of dual citizenship can be resolved with the help of bilateral or multilateral treaties (Hammar 1989: 87), then the questions which remain the most acute are the questions of political identity. However, in this study I argue that practical considerations should not be dismissed, but, rather, reformulated from the perspective of the state. The subsequent chapters present a case study of a critical juncture in the regulation of dual citizenship, exploring the arguments presented in the discourse on citizenship that serve to expose the underlying discursive patterns, allowing us to provide a more nuanced answer to the question whether and in what ways dual citizenship is indeed an indicator of liberalization and/or convergence of citizenship regulations.

*1.1.6. Challenging the liberalization/convergence hypothesis: some research notes.*

Taking into account the combined claims of postnationalists and multiculturalists, we are facing the question whether the convergence and liberalization thesis applies not only to the formal, but also to the substantive aspects of citizenship regulation. The question that needs to be addressed, rather than assumed, is whether the decoupling of people, territory and rights, associated with postnationalist developments, indeed leads to citizenship characterized by greater inclusiveness. The empirical indicators that allow us to test these claims have been variously formulated, but, for the purpose of work that is focused on the legal status of citizenship, the appropriate indicators can be found in the conditions of access to citizenship in terms of the requirements for naturalization and availability of dual citizenship.

The question of applying the principle of *ius soli* for second and third generation migrants, the conditions of naturalization for first generation migrants, and the rules

concerning dual citizenship for immigrants and for emigrants have all been employed in the attempts to determine whether the hypotheses of liberalization/ convergence can indeed be substantiated (Howard 2009; Koopmans, Michalowski and Waibel 2012). Most of the arguments supporting the liberalization hypotheses have concentrated on the expansion of the *ius soli* principle for generations born on the soil of the country to immigrant parents. On the other hand, if one looks at the contents of the conditions of naturalization for the first generation migrants, one may be more likely to reject the liberalization hypothesis. Dual citizenship is an especially interesting lens for exploring the relative inclusivity vs. restrictiveness due to the fact that it straddles the national boundary, but it should not be equated with inclusiveness – rather, one should look not only at the nominal availability of multiple citizenships, but also at the contents attributed to dual citizenship in the public and the arguments employed in its defence vs. criticism, which is what I proceed to do below in Chapters 2 and 3.

So far, empirical data have not been able to provide enough conclusiveness regarding citizenship regulation. The major study of European countries' citizenship legislation warns against an optimistic assumption of an overall trend of growing acceptance of dual citizenship; in fact, it points out the shifting bidirectional patterns that are closely related to contemporary political changes (Bauböck *et al.* 2006b: 16). In the past decade the celebration of the decline of the nation-state has given way to an acknowledgment of a countervailing trend towards a more restrictive backlash that is mostly ascribed to securitization in the post-9/11 context (Bauböck 2006; Faist and Kivisto 2007). Nevertheless, the prevalent hypothesis that posits a convergence towards greater liberalization of citizenship legislation survives, and the rules regarding dual citizenship

are considered to be one of the key indicators attesting to such liberalization. Significantly, even where there are indications of securitization-induced restrictiveness towards immigrants, the expanding possibilities for co-ethnic emigrants to gain dual citizenship are rarely questioned by most theorists (Bauböck, Ersbøll, Groenendijk and Waldrauch 2006; Faist 2007; Faist and Kivisto 2007; Howard 2009). My empirical investigation challenges these assumptions. Dual citizenship, as a hybrid phenomenon straddling the divide between outside- and in-nation-state perspectives, is an especially conducive lens for advancing the understanding of the contradictory trends of greater liberalization and increased restrictiveness, as well as the dynamics of what Joppke (2005) calls "de- and re-ethnicization" of citizenship.

In sum, it is possible to point out two developments that undermine both the postnationalist and the multicultural outlook: first, the tightening of controls of access to residency (both the attempts to control immigration in the first place and to limit the possibilities of existing immigrants to cross over from vulnerable positions as irregular or temporary migrants to a more secure long-term or permanent residency status), and, second, the "thickening" of requirements for access to citizenship. In Chapter 5 I explore the fact that many countries are turning towards stricter, "thicker" integration requirements, as evident in the proliferation of naturalization tests and language competency requirements, which reaffirm the prevalence of integration as assimilation (Bauböck *et al.* 2006b; Joppke and Morawska 2003; Koopmans 2012; etc.), and explore whether there is a trend towards convergence, even if it is not liberalizing. These counter-liberalizing tendencies have to do with both the securitization and identitarian concerns, both of which are manifest in the Lithuanian discourse on citizenship analyzed in the subsequent chapters.

Another limitation of the postnationalist approach lies in its focus on European integration as spearheading these developments of converging towards liberalization (discussed above in section 1.1.4). First, the uniqueness of the EU as a political construct limits the generalizability of the postnationalist arguments, second, it may result in an overly optimistic and one-sided view of its influence upon domestic policies, and, third, it brackets the issue of 'fortress Europe' that is inseparable from any trans-European developments in the sphere of migration. Even if we could agree that there are indicators supporting the convergence hypothesis in the EU, in subsequent chapters I explore how the EU can be employed as a factor both towards liberalization and towards greater restrictions.

The attempts in citizenship studies to find a solution to the seeming impasse between the claims of liberalization and restrictiveness have looked at the more short-term factors, namely, the constellation of political forces, emphasizing the role of political parties of the left and of the right and the relative politicization of the questions of citizenship and migration (Freeman 1995; Howard 2009; Joppke 1998). With this paper, I advocate a multiple-source perspective and strive to look at two dimensions in an attempt to evaluate the relative restrictiveness vs. liberalization: a broader historical perspective on the development of citizenship regulation in order to take into account path dependency and the historical-political context of a political unit (see Chapter 2), and a qualitative dissecting of the public politico-legal discourse in order to distill the meaning ascribed to citizenship and its key criteria (see Chapters 2, 3, 4, 5). Before proceeding to the analysis of the Lithuanian case, let us set the stage by discussing the immediate context of Central and Eastern Europe.

### *1.2. The curious case of citizenship regulation in Central and Eastern Europe*

The emphasis on citizenship as identity seems to be affirmed by a glance at the new Europe. The studies of dual citizenship in relation to Central and Eastern Europe have been mostly focused on the situation of historical minorities and diasporas in the face of post-imperial disparities between the boundaries of the state and the nation. This dissonance between nation and state has been accompanied by flows of ethnic migration (Jennissen 2011). Although various historic emigration countries, such as Germany, Portugal, Italy, Spain, and Greece, have for a long time allowed preferential access to citizenship based on kinship criteria (Bauböck 2006b; Kovács 2005), Central and Eastern Europe has been considered the archetype of *völkisch* tendencies (Berend 1996). Poland and Germany, Croatia and Bosnia-Hercegovina, Romania and Moldova, Bulgaria and Turkey share quite a few citizens. In addition, considerable numbers of displaced persons who became citizens of Western democracies in the aftermath of the Second World War have demanded recognition and institutionalization of their relationship with the homeland in most of the post-communist countries and have been given ear in attempts to right the historical wrongs. Hungary has received the most scholarly attention due to the sheer size of its historic losses of territory and numbers of Hungarians in neighboring countries, as well as persistent attempts to establish legal ties with kin minorities, including a failed referendum on dual citizenship in 2004 (e.g. Batory 2010; Csergő and Goldgeier 2004; Csergő and Goldgeier 2005; Fowler 2002; Iordachi 2004; Kántor 2006; Kemp 2006; Kovács 2005; Waterbury 2006). Among Baltic states, Lithuania has gotten the least attention compared to Estonia and Latvia that have had to deal with much larger ethnic Russian minorities.

My analysis of the Lithuanian case demonstrates that in the wake of European integration the dual citizenship discourse in Central and Eastern European countries

appears to be shifting towards greater multidimensionality, both in terms of a growing awareness of actual and potential immigration of third country nationals (Bauböck 1994), which has so far taken the backseat to concerns about ethnic kin (Bauböck 2006b), and in terms of the EU-law view of ethnicity as an unacceptably discriminatory criterion for citizenship (McGarry et al. 2006). These developments co-exist with ever-present historically informed contexts in postcommunist countries. I would like to address the latter two elements here in a bit more detail.

*1.2.1. Normative influence of EU conditionality.*

One of the key characteristics of the European Union is a certain conditionality that it applies to potential members and even to those countries which have no prospect of becoming members, but receive foreign aid or some other assistance from the EU. Different enlargements in EU history brought with them unique sets of circumstances. The end of the Cold War opened up membership possibilities to countries that hitherto had been far removed from the EU norms in their characteristics, and the postcommunist countries quickly proclaimed their desire to "return" to Europe. In order to manage the mutual expectations, the European Council – a meeting of the heads of EU member states – formulated the so-called Copenhagen criteria in a summit in 1993. A state that wishes to join the EU must accept the *acquis communautaire*, be economically viable and politically democratic, which includes respect for human rights and protection of minorities. Candidates for EU membership had to "Europeanize" many policy sectors, but for the purposes of this paper it is sufficient to focus on the imperative of non-discrimination which became an important part of the normative pressures exerted by the Western

European institutions on the postcommunist countries before the latter even applied for membership.

The process of accession to the EU and especially the Copenhagen criterion concerning the rights of minorities have been viewed as a positive and moderating influence on potential explosiveness of ethnonationalism[2] in the post-communist world, nudging them towards a more territorially and less ethnically based inclusiveness (e.g. Csergő and Goldgeier 2005; Henderson 1999; Maresceau 1997; Schimmelfennig and Sedelmeier 2005; Weidenfeld 1995; cf. Hughes et al. 2004; Jutila 2009). Yet this emphasis on territoriality as a criterion of inclusion coexists with the increased possibility to de-territorialize a range of functional and symbolic aspects of citizenship brought about by aforementioned freedom of movement within the European Union (McGarry et al. 2006). The overwhelming ethnic orientation of the public and the politicians in the Lithuanian case that was discussed in the previous chapter helps to bring attention to the opportunities provided by the European integration for the "amalgamation of the identity and the ethno-cultural aspects of citizenship" (Schierup et al. 2006: 257). One of the questions that Chapter 5 addresses is the potential negating the recycling of the stereotypical dichotomy between the "civic West" and the "ethnonationalist East" (see Johns 2003 and Jutila 2009 on what they call double standards on minority rights). In fact, Maatsch (2011) demonstrates that countries like Poland and Hungary explicitly learned from countries like Germany and made their citizenship regulation more restrictive in their movement towards convergence. One could venture to question whether there is substantial difference between *ius sanguinis* and ethnonationalism, or whether the civic-ethnic categorization of countries

[2] I use the term "ethnonationalism" following Connor (1994) in that it emphasizes the aspect of descent.

still has any validity. The analysis in Chapter 5 overviews the validity of such distinctions among the EU countries, while Chapters 2, 3 and 4 touch upon the evidence of EU normative influence on Lithuanian citizenship regulation more specifically.

Although the developments in the post-communist Europe in the past decade have been strongly shaped by the aspiration to EU membership, shifts and concerns brought by actual membership is a brand new environment for this region, in the wake of which the westbound migration caused by economic disparities between the 'old' and the 'new' Europe (Wallace 2001) seems to be the most salient issue, bringing with it the pressing questions of disaggregated membership and the relationship between legal status and national identity. While the phenomenon of "trans-sovereign" or "virtual" nationalism (Csergő and Goldgeier, 2005) in Central and Eastern European countries has been mostly analyzed with an eye on historic minorities and the legacy of the 20th century wars, I advocate the utility of incorporating the dimension of contemporary migration into such inquiries. The case of Lithuania, which does not easily square with most predictions aimed at emigration countries, helps highlight the tensions between transnationalism and nationalism unraveled by migration and the EU integration, and provides an additional insight into the broader implications of the EU – postcommunist nexus.

However, it would be myopic to look at citizenship regulation in postcommunist Central and Eastern Europe only through the lens of traditional ethnonationalism or disturbances of migration. I propose that we cannot understand the position of these countries without taking into account their self-conception as postcolonial countries in the sense that, for centuries, they had been under foreign domination exerted by Russia and then the Soviet Union, which is especially relevant for the Baltic states (in fact, there are

instances of explicit referral to the Soviet occupation as colonization, for example, in Estonia (Reinikainen 2012)). In the next section I spell out the implications of this experience.

*1.2.2. Stateness concerns.*

A large part of scholarship on the postcommunist region is confined to either area studies or transitology. In the introduction I proposed to reappropriate a concept from the field of study of democratic transitions and consolidation – the notion of stateness. As stateness refers to the security of the boundaries of state and nation, citizenship regulation is its key tool. I suggest that stateness should not be perceived as belonging in only one part of the process of political development which can be achieved in a finite manner. Rather, I argue that countries have a constant concern regarding their stateness and actively engage in its maintenance. The most immediate concern stems from the perception of foreign threat.

In this context, I suggest that it would be fruitful to interpret the postcommunist experience as a variant of postcolonialism in order to pave the way for broader application of the insights generated by the Lithuanian case. Applying the postcolonial label to the issues encountered in Eastern Europe is not a common way of approaching the study of this region in general and of its political vicissitudes in particular. There are very few references to Eastern Europe in postcolonial literature, or, conversely, references to postcolonialism in postcommunist studies, and what there is usually belongs to the sphere of arts and humanities (Korek 2007; Mazierska, Kristensen and Näripea 2014; Segel 2008). Therefore, I have to build some ground for my analytical endeavours.

I use the term of colonialism in order to highlight the experience of foreign domination and the conception of the self in opposition to that oppressive foreign other, and bracket the very complex and extensive postcolonialism literature which is mostly focused on countries in the developing world and hardly touches upon what used to be called "the Second World". Part of the divide stems from the agreement among the colonial powers to only consider "saltwater" colonialism as true colonialism in order to protect themselves from charges at home (Kymlicka 2007b), and part of it could be due to a paradoxical Euro-centrism of postcolonial inquiries in that they have predominantly focused on the aftermath of Western European empires, especially on Anglophone postcolonial countries and their diasporas (Keown, Murphy and Procter 2009). However, it is possible to distill certain overarching characteristics of postcoloniality. As Childs and Williams (1997) note in their survey of postcolonial theorizing, postcolonial nationalists are engaged through anti-colonial practices in a pursuit of mythical indigeneity interrupted by colonizers. In a similar vein, the nationalist impulse in Eastern Europe was very clearly directed agaist what was perceived as foreign domination (Holmes 1999). Such parallels allow me to argue that the logic of anti-colonialism applies to the situation of Central and Eastern Europe.

If we challenge the "saltwater" distinction, the behaviour of the Russian empire in the past several centuries can be considered classical colonialism. That is especially true for its activities in Asia, but the European part of the Russian empire also experienced forced russification, closure of native-language educational institutions and prevention of carreer advancement, etc. Therefore, it makes sense to presume that the more traditional postcolonial countries and postcommunist countries share some of the crucial elements of

what constitutes a postcolonial situation. If we accept that nationalism of oppressed nations, characterized by its reactionary relationship to the fact that under a colonial situation the ruling strata are aligned with the oppressor rather than with the local population (Hroch 1985), is a common feature in both the Second and the Third world, we can conceive of postcommunist countries as part of a larger phenomenon of states that have defined themselves against their oppressors.

Brubaker (2000) suggests that we need to think about the postcommunist area as post-multinational, not only due to the break-up of the USSR and Yugoslavia, but also looking at a longer historical perspective and the experiences of Central and Eastern Europe under the Russian, Austrian-Hungarian and Ottoman empires. There is also a considerable strand of literature that considers the Soviet Union to have been an empire (Kiss 1998). Thus the label of postcolonialism is even more appropriate for understanding the approach of these countries to the relationship with other ethnicities that are viewed as leftovers of imperialism. Due to sometimes arbitrary carving of borders, many countries in Europe and beyond are left with what Brubaker (2000: 2) calls "accidental diasporas" that appear due to the movement of borders over people, in contrast to the traditional diasporas that appear due to the movement of people across borders due to economic or humanitarian reasons.

Another dimension in which we can find comparability between postcommunist and postcolonial countries is that the status of periphery or semi-periphery is common to both of them. A part of this condition is expressed in the fact that they experience more emigration than immigration, and a lot of migrants can be characterized as "neonomads" (Forment 1996: 315) in that the migration is often circular. Although it is important to acknowledge the difference in destinations – while migrants from former colonies tend to

migrate to former metropolis, the Eastern European migrants go to the West, not to Russia, – the underlying character of migration has enough similarities to be comparable.

A tentative move in the direction of putting postcommunist and postcolonial studies in touch with each other is the collection of essays edited by Lowell W. Barrington (2006) which provides an array of analyses of nationalism and nation-building in postcolonial and postcommunist states, although it still does not engage in much systematic comparison among cases. The authors identify two main concerns of nationalists – the boundaries of national membership and of national territory – and based on them distinguish two broad families of nationalism: state-seeking nationalism that morphs into sovereignty-protecting nationalism after independence, and identity-creating nationalism that further develops as civic-identity creating, ethnic-identity creating, co-national protecting and diasporic types of nationalism (Barrington 2006; Suny 2006). The authors emphasize that the most important lesson of this endeavour is the appreciation for continued relevance of nationalist orientation in postcolonial states and the need to appreciate their past experiences in the efforts to understand the current constellations of nationalism. However, for my purposes the crucial element is the acknowledgement of continuous fundamental concern with the boundaries of the nation and the territorial state.

I propose to take this bridge between regions a step further and to apply it to the analysis of citizenship, building on the appreciation of the fundamental mutual imbrications of citizenship and national identity. More specifically, I believe that the concept of postcolonialism helps us to locate the second missing ingredient which allows us to overcome the inadequacy of the civic-ethnic dichotomy when trying to understand the developments in national identity and citizenship – the self-image of a "nation of

'innocent sufferers'" (Clark 2006) and the subsequent notion employed by postcolonial state/nation-builders that colonial experience of foreign domination entitles the nation in question to something akin to "affirmative action" (Kuzio 2006; Suny 2006). This nuance calls into question the tendency to condemn the reliance of nationalism on the notion of enemies of, and threats to, the state and the nation, and thus challenges the normative disbalance between the labels of a civic and an ethnic nation-state.

The concept of stateness (Linz and Stepan 1996), is, to my mind, very suitable for capturing the concern with the continuous maintenance of the identitarian and territorial boundaries of the nation-state, as it emphasizes a monopoly over territory and an agreement about the demos as fundamental elements relevant to the regions that fall under postcolonial/postcommunist/transitional labels, and is distinct from the concepts of state capacity or rule of law (see Møller and Skaaning 2011). The tense relationship between stateness and democracy highlighted by Linz and Stepan (1996) points us in the right direction when trying to explain the paradoxical case of Lithuanian dual citizenship. They conceptualized stateness as a condition of a country possessing two main elements: clearly demarcated territorial boundaries of a polity and an agreement on who has a right to citizenship in a state (Linz and Stepan 1996: 16). They pointed out that many countries in Western Europe developed as states and as nations at a roughly similar time and therefore their *demoi* were sufficiently clear when these countries became democracies. In a somewhat teleological conception of the democratic transition process, postcommunist countries were expected to strive for a similar goal and to resolve the definition of their citizenry in a nondiscriminatory manner. Their inability to achieve such standards has been

one of the main reasons for continuous juxtaposition of ethnonationalist Central and Eastern Europe vs. the more civic West.

However, I propose that stateness cannot be treated as a static or finite phenomenon either in the postcommunist area or beyond. In fact, in the age of globalization and its challenges to the nation-state, we could claim that stateness is under constant pressure. Migration is central to these pressures both by making the territorial boundary definition more difficult and by multiplying the challenges to the acceptable ascription of the membership in the demos. Therefore, even the stateness of those Western countries that seemed to have solved the questions of territorial and *demos* boundaries long time ago is being challenged. Meanwhile, when it comes to the stateness of postcommunist countries, the challenge of globalization is compounded by the perceived threat of Russian imperialism. Thus stateness is under constant challenge and needs to be constantly maintained in all countries, but especially in the postcommunist Central and Eastern Europe. My contribution to this field of inquiry can be formulated as the proposition that citizenship regulation is the boundary maintenance regime that is continuously employed in response to the challenges to the demographic elements of stateness, and that dual citizenship is the solution that gets applied to the most intractable locations of such challenges.

As this is a theory-building exercise, I flesh out my analysis of the Lithuanian case, and later through an overview of citizenship regulation and discourse in other regions of the world, in an incremental manner, so by the end of the paper the reader would have formed a rich understanding of what is involved in the stateness boundary maintenance in a situation where the identitarian aspect of citizenship is at the same time delegitimized by

international norms and reinforced by the divorce of some rights from citizenship. Central and Eastern Europe is especially conducive for such analysis due to being caught between the normative pressure of the EU and the threat of Russia, however, it is important to conceptualize the factors operative in the Lithuanian case in such a way as to ensure their broader applicability. I contend that a concern with stateness and the first ingredient distilled in the critique of the liberalization/convergence thesis – the unflagging or even increasing importance of the identitarian dimension of citizenship, – can be identified as the conditions of possibility of ambiguous and/or subversive use of external factors like international norms and security concerns when it comes to citizenship regulation[3]. I proceed to summarize the main elements of the theoretical framework presented in this chapter before I turn to the empirical analysis of the case of Lithuanian dual citizenship.

### *1.3. Concluding remarks*

This chapter proposed a theoretical framework composed of four key elements. First, I analyzed the liberalization/ convergence thesis which has dominated citizenship studies for the past several decades and which claims that citizenship regulation is becoming more similar across countries and that the vector of this trend is towards greater liberalization characterized as greater access to citizenship and a lessening of the importance of identitarian criteria in citizenship attribution. The postnationalist arguments underpinning the liberalization/ convergence thesis center on the increasing decoupling of rights from citizenship, and treat the European Union as the laboratory of such developments. I pointed out that the paradoxical unintended effect of such decoupling has

[3] For a study built on a premise of the interaction between international linkages and stateness in eastern neighbours of the EU, although differently conceptualized, see Sasse 2013.

been to reinforce the identitarian dimension of citizenship. Therefore, the effect that European integration is expected to have on postcommunist countries can not only be characterized by the hegemony of the norms of non-discrimination, but also by increased opportunities to reassert ethnonational identities within and across territorial borders. I also extended the argument of the reassertion of the identitarian dimension of citizenship to the phenomenon of dual citizenship and claimed that this chatracteristic is not only endemic to dual citizenship for emigrants, but can be applied to immigration countries' behaviour as well.

I argue that we can only understand the Lithuanian dual citizenship case if we take into account this ambiguity combined with the concerns with the threats to stateness arising from globalization, migration and postcolonial resentment of the threat of Russian imperialism. In the subsequent empirical chapters, I explore how these elements form the conditions of possibility of paradoxical developments in citizenship regulation that go against the predictions of mainstream citizenship theories and expectations of both politicians and the public, and in the comparative Chapter 5 I explore the wider applicability of the notion of citizenship regulation as a boundary maintenance regime.

## Chapter 2. Citizenship regulation in an ethnonationalist postcolonial emigration state

The case that I explore centers around an outcome of an inquiry into the relationship between citizenship and ethnicity in Lithuania, which started as a legal process, but exploded into one of the most controversial and hotly debated topics of the public discourse since the country joined the European Union. In order to understand this critical juncture in Lithuanian citizenship politics and pinpoint the emerging patterns that are characteristic of the wider constellation of citizenship discourse in the era of mass migration and human rights expansion, it is vital to explore the development and the context of Lithuanian citizenship regulation. Lithuania has often been neglected in studies of citizenship (Krūma 2007 and Ziemele 2005 being a rare exception) in favor of more obviously controversial cases of Latvia and Estonia (e.g. Lukić et al. 2006; Schimmelfennig et al. 2005; Thompson 1999; Zielonka and Pravda 2001), thus an inquiry into this case can be a fruitful addition to the study of citizenship issues in the postcommunist world. This chapter presents the background and development of Lithuanian citizenship regulation until the critical juncture represented by the 2006 dual citizenship case. I begin by briefly summarizing the case in order to highlight the ways in which it relates to the context of Lithuanian citizenship. Then I discuss the historical and demographic background of Lithuanian citizenship regulation, establishing the status of Lithuania as a postcolonial ethnonationalist state and an emigration country. The third part of this chapter traces the process of the development of Lithuanian citizenship regulation since the inception of the independent state of the Republic of Lithuania. I conclude this chapter by summarizing the main insights gleaned from the historical context and the evolution of citizenship regulation that can help put the

2006 Constitutional Court ruling in perspective before moving on to the discussion of the case under scrutiny in the subsequent chapter.

### *2.1. The paradoxical nature of the case of Lithuanian dual citizenship*

In November 2006, the Constitutional Court ruled on a case regarding discriminatory nature of the rules regarding availability of dual citizenship (presented in greater detail in Chapter 3). The case was based on the combined inquiries of a group of members of the parliament belonging to liberal parties and ethnic minorities, and of a district court facing a case of an Israeli citizen who wanted to regain her Lithuanian citizenship, which she possessed before World War II, in order to achieve restitution of her property, but was refused on the basis of the law which allowed ethnic Lithuanians to retain Lithuanian citizenship if they emigrated, but forbade preservation of Lithuanian citizenship for people of other ethnicities who repatriated to their ethnic homelands.

The Constitutional Court ruled that indeed the repatriation clause is a case of ethnic discrimination. However, instead of expanding the availability of dual citizenship to include people of other ethnicities, the Court forbade dual citizenship for everyone, including ethnic Lithuanians. As we have established in the previous chapter, this kind of an outcome is unexpected for an emigrant-sending state. The mainstream hypothesis pertaining to emigration countries holds that the state takes on the active pursuit of transantionalism, exclusively focusing on co-ethnics abroad (Faist 2007). The state seizes the policy of dual citizenship as a means to control border-crossing social formations, as well as to further remittances and investment by emigrants in the country of origin. Furthermore, in line with the dominant liberalization/convergence approach, once instituted, dual citizenship is unlikely to be reversed.

The ruling appears even more counterintuitive if one looks for an explanation in its temporal and geopolitical externalities (increased security due to membership in the NATO and the EU and unprecedented emigration rates to countries belonging to aforemenetioned organizations). Considering overwhelming public support for providing dual citizenship to ethnic Lithuanians (55-88 percent according to various polls, depending on the formulation of the question[4]), echoed in parliamentary debates and the media, understanding the restrictive turn in the Lithuanian dual citizenship regime and its endurance for almost a decade requires deeper analysis.

As scholars have approached dual citizenship as a path-dependent phenomenon (e.g. Faist, Gerdes and Rieple 2004), it is necessary to trace that path, keeping in mind the theoretical framework discussed in the preceding chapter. Namely, we have to ask whether there is evidence of liberalization/convergence in the evolution of Lithuanian citizenship regulation, what role is played by postcolonial experiences and by the imperatives of European integration, and what is the relationship between nationhood and statehood in the official conception of Lithuanian citizenship. The picture painted in this chapter should serve as a foundation for appreciating the degree to which the November 2006 Constitutional Court ruling discussed in the subsequent chapter is indeed a paradox and a puzzle.

[4] Results of various representative surveys conducted by public opinion research organizations and reported in the media. "Almost 60%" was reported in BNS (2007). 88.1% support was reported in Lrytas.lt (2007). 60.7% support reported in DELFI.lt. (2007). 72.3% support was reported in DELFI.lt, „Spinter tyrimai" (2009). 55% support was reported in BNS (2013). Due to the differences in the exact formulation of survey questions it is not possible to draw systematic comparisons, but the general tendency of the support of the majority of the population for dual citizenship for ethnic Lithuanians is indisputable.

*2.2. History and demographics.*

*2.2.1. A brief history of Lithuanian nationhood and statehood.*

The first mention of Lithuania in historical records happened in 1009 as a place where a missionary was killed – a context which represents the reputation of Lithuania as the last pagan state in Europe (parts of it officially baptized in 1387, the last part only in 1413), a state with a distinct sense of identity, heightened by the continuous struggle against the encroachment of its neighbours – Russia, Poland, Prussia, and even Sweden in the 17th century. Although Lithuania used to be a formidable state several hundred years ago, first as a largest duchy in Europe in the 14th-16th centuries, and then as a part of a joint state with Poland (union through royal marriage) from 1569 until 1795 when it was annexed by the Russian empire, the timeframe that is the most relevant to our subject starts with the 19th century, as that is the first time we can meaningfully talk about such questions like migration and nationhood. However, the centuries of history shared with the neighbouring countries (Germany in its many forms, Poland, and Russia) should be kept in mind as the backdrop to the ways in which Lithuanian nationhood and statehood, and consequently citizenship, has been conceptualized in more modern times.

During the times of the union with Poland, Polish culture was dominant among nobility, whereas Lithuanian language and culture were considered backwards and only appropriate for peasants, and anyone among the nobility and clergy who aspired to not be considered backwards was expected to shun Lithuanian language and use Polish instead. With the advent of the Russian empire, both Polish and Lithuanian nobility staged several rebellions, prompting a crackdown from Russia which culminated in a campaign of assimilation. After the 1831 rebellion the Lithuanian university was closed, and after the

1863 rebellion Lithuanian language press and even primary education was banned. Instead of succumbing to the assimilation efforts, Lithuanians developed a network of secret primary schools and book smugglers, and with the unrest in the early 1900s the bans were acknowledged as futile and were lifted. For Lithuanians, the resistance to assimilation was confounded by the fact that the Polish nobility argued that resistance to Russia should equal alignment with Polish language and culture, and the fact that higher education could only be pursued in a foreign language. However, by the end of the 19th century, Lithuania was subject to a broad nationalist movement, which eventually put forth demands for independence, taking advantage of the weakened state of Germany and Russia due to the First World War, leading to the declaration of independence in 1918. The experiences under the Polish cultural hegemony and Russian forced assimilation and the reactions to them allow us to interpret Lithuania as a postcolonial case.

The newly independent Lithuanian state had to fight Russian efforts to subvert its government and establish a socialist regime (the fear of a repetition of such attempts was one of the factors that led to a coup in 1926 which turned Lithuania from a parliamentary democracy into a nationalist authoritarian state), and deal with territorial disputes with Germany and Poland (both of which engaged in their own assimilationist efforts in the occupied Lithuanian territories) which were resolved only briefly before the Second World War. In fact, during the majority of the existence of the interwar republic, the southeast of Lithuania, including its capital Vilnius, was occupied by Poland which claimed that it was actually Polish lands and recorded most of the inhabitants as Poles, even changing their surnames to sound more Polish (including that of the family of the author of this thesis). Lithuania established a temporary capital in its second largest city Kaunas and never

recognized the occupied territories as Polish. Ironically, Soviet Union used the provision of help in getting the occupied territories back from Poland in 1939 as a way to strongarm Lithuania into a one-sided military treaty which paved the way for subsequent occupation enabled by the 1939 Molotov-Ribbentrop pact. The legacy of the Polish cultural hegemony efforts in both the times of the joint republic in the 16th-18th centuries, during the 19th century resistance against the Russian empire and its assimilationist campaign, and during the more current occupation in the interwar period, is that a large portion of the inhabitants of that region, originally a mix of Poles, Lithuanians and Belorussians, identify themselves as Polish and speak in a language that is a mix of Polish, Lithuanian, Russian and Belorussian.

Soviet Union occupied Lithuania in 1940, was replaced by German occupation in 1941-1945, and then again reclaimed Lithuania as a part of the USSR in 1945. The armed guerilla resistance to Soviet occupation in Lithuania was eradicated by 1953. A large portion of the more educated population who could have led resistance efforts were either exiled to Siberia, where many died from cold, exhaustion and starvation (the first wave of exiles took place within months of annexation, in June of 1941, right before the German occupation, which helps to understand why initially Lithuanians welcomed Germans as liberators and only became disillusioned in the wake of the Holocaust), or escaped to the West with the advent of the Red Army in 1945 and eventually moved from the displaced persons camps in Germany on to the Anglosaxon immigration countries, mostly the USA. A small number of dissidents, mostly clergy members, remained active, usually facing imprisonment and torture. The resistance movement gained traction only in the late 1980s, enabled by the liberalization brought on by the developments in the Soviet Union. Mass

nationalist demonstrations took place in 1988-1989, and the first actually free elections in 1989 yielded an absolute majority of nationalists in the parliament, who did not delay in declaring a restoration of independence on March 11th, 1990.

The first several years after the declaration of independence were marked by large scale economic turmoil due to the triple transition. Many decisions that were taken by the government were oriented more towards establishing statehood than towards any concern for economic efficiency, paying particular attention to ways of preventing the possibility for former foreign aggressors, namely, Russia and to a certain extent Poland, to gain any ground in Lithuania. For example, laws on land ownership were explicitly formulated in such a way that only Lithuanian citizens or citizens of pre-1989 OECD countries would be allowed to purchase land, thus explicitly excluding both Russia and Poland (Darden 2009: 131). The approach towards ethnic minorities in Lithuania is substantially informed by the politico-historical approach to their kin-states, but there are certain peculiarities to each of them. Let us briefly overview the key elements of ethnic relations in Lithuania.

*2.2.2. Ethnic relations in the newly independent Lithuania.*

A lot of the Lithuanian migration is directly related to the ebbs and flows of its historical relations with Russia in its many incarnations, and a lot of the attitude towards people of other ethnicities is derived from the historical struggles with the neighbouring nations whence these minorities originate. Some of these struggles are further in the past, but some are not that far removed from today. More specifically, in the circumstances mirroring the establishment of the first independent Lithuanian republic, the newly independent state had to address challenges related to Russia and Poland.

*2.2.2.1. Russian.* On January 13th, 1991, Soviet Union (which at that point equaled Russia) launched an attempt to subdue Lithuanian independence by capturing the TV and radio broadcasting stations, killing 14 and injuring 702 unarmed protesters who attempted to defend "strategic objects" by acting as human shields. The personnel installed in the captured stations broadcasted as if Lithuania was back in the USSR, however, no one took them seriously and after the 1991 August coup in Moscow they retreated. Direct Russian threat to Lithuania symbolically ended by the retreat of Red Army forces in 1993, but a large part of the public and politicians still perceive Russia as a threat, exacerbated most recently by the 2013-2015 events in Ukraine.

The Russian minority in Lithuania (see Table 2.1 for ethnic composition of the population of Lithuania) is much smaller than in the other Baltic countries[5] due to the differences in the duration of the annexation by the Russian empire and the relative weight of industry attracting Russian colonizers. Therefore, it is not perceived as a significant threat on its own, only as a potential Trojan horse for Russia's political schemes. It is widely believed that those who are overwhelmingly loyal to Russia, such as former officers of the Red Army, have already repatriated to Russia immediately after the restoration of Lithuanian independence, and that those who remain actually appreciate what Lithuania with its membership in the EU has to offer and thus are not eager to return to Russian dominion. However, Russia's ability to capture the discourse of a kin-state after the collapse of the Soviet Union (King and Melvin 1998) has kept a part of the public and politicians alert to the possibility that the Russian government may use the Russian minority as a Trojan horse in an attempt to jeopardize Lithuanian independence.

[5] Russians comprise 26% of the population of Latvia (as reported by the Central Statistical Bureau of Latvia (2014: 13)) and 25.2% of the Estonian population (as reported by the Statistics Estonia (2014: 8)).

Table 2.1. Ethnic composition of the population of Lithuania.

| Year | Lithu-anian | Russian | Polish | Belorussian | Ukrainian | Jewish | Latvian | Tatar | German | Roma | Other |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1979 | 80% | 8.9% | 7.3% | 1.7% | 1% | 0.4% | 0.1% | 0.1% | 0.1% | 0.1% | 0.3% |
| 1989 | 79.6% | 9.4% | 7% | 1.7% | 1.2% | 0.3% | 0.1% | 0.1% | 0.1% | 0.1% | 0.4% |
| 2001 | 83.5% | 6.3% | 6.7% | 1.2% | 0.7% | 0.1% | 0.1% | 0.1% | 0.1% | 0.1% | 0.2% |
| 2011 | 84.1% | 5.8% | 6.6% | 1.2% | 0.5% | 0.1% | 0.1% | 0.1% | 0.1% | 0.1% | 0.2% |
| 2014 | 86.3% | 5% | 5.6% | 1.4% | 0.7% | 0.1% | 0.1% | 0.1% | 0.1% | 0.1% | 0.5% |

Source: Lithuanian Department of Statistics (www.stat.gov.lt), last accessed on October 1st, 2014.

*2.2.2.2. Polish.* The Polish situation in the wake of the restoration of independence was less clear-cut.[6] The population of the southeastern part of Lithuania which had underwent Polish occupation and assimilation efforts in 1920-1939 identified themselves as Polish and raised demands for regional autonomy or even secession from Lithuania and unification with Poland. The Polish state did not instigate or provide support for such claims, in fact, the Polish movement in Lithuania was supported by the Soviet Union as a means of weakening the Lithuanian claims to statehood. However, a hardline stance of the government against any concessions beyond schooling in the ethnic minority language, and a lack of support for rattachist aspirations from the Polish state in 1990s, prevented tangible political achievements on behalf of the autonomist movement. Still, the dominant attitude in the Lithuanian public discourse is that those who consider themselves Polish are not loyal to the Lithuanian state and are therefore perceived with suspicion.

The attitude towards Poles is exacerbated by the fact that the local government in this region is overwhelmingly dominated by the Polish Alliance, the successor party of the

[6] A recommended English-language detailed account of the situation of the Polish minority in Lithuania during Soviet times and after restoration of independence can be found in Snyder (1998: 188-194).

autonomist movement, which is adamant about the dominance of Polish language and culture in the public life of this region. A recurring complaint from the locals who identify as Poles is that Lithuanian government does not allow them to post street signs in both languages, as recommended by the European Council. However, the signs that they actually try to post are written in the mix of Polish, Lithuanian, Russian and Belorussian, prompting the complaints from the Lithuanian population and the rebuttals from the Lithuanian government that it is not actually in Polish and thus should not be seriously considered.

Another common complaint raised by the Poles is that they cannot have their names in their official documents due to the fact that the use of non-Lithuanian letters (such as the letters X, W, Ł, or anything from the Cyrillic alphabet) is prohibited in official Lithuanian documents (thus preventing the author of this thesis from being able to take her husband's name). The support for such demands by the Polish state in the past decade, and the strengthening of Lithuanian Poles' relationship with their kin-state thanks to the establishment of the Polish card in 2007, has relatively soured the Polish-Lithuanian interstate relations which were considered to be exceptionally good in the initial period after the collapse of the Soviet Union. The plaintiffs periodically bring these complaints against the Lithuanian government, who is still standing its ground on these issues, into court, from the Constitutional Court of the Republic of Lithuania to the European Court of Human Rights. This tug-of-war has resulted in a poisoned atmosphere in regards to the Polish ethnic minority. We could go so far as to claim that, in terms of ethnic minorities, the Poles are perceived as an even larger threat than Russians, even if the same cannot be said for the corresponding countries.

*2.2.2.3. German.* Another historical antagonist, Germany, is historically perceived as a direct heir of the Prussian empire which had assimilated the southwestern part of Lithuania and its ethnic kin, the Baltic tribe by the name of Prussians. In the more recent history, Germany is remembered not only for the general atrocities of the Second World War, but also for annexing the seaside region of Klaipėda, currently the third largest city in Lithuania, shortly before the war started, and claiming it to be German, when in actuality it was part of the Lithuanian lands forcibly assimilated by the Prussian empire. The current German state is not perceived as a threat due to its central position in the European Union, but the potential threat of ethnic Germans laying claims on the Lithuanian seaside is still acknowledged. There are hardly any Germans in Lithuania today, but the memory of German dominance in the seaside region is reawakened by annual German tourist pilgrimages to these supposedly German lands, periodically bursting into the Lithuanian public discourse as a cautionary tale against allowing foreigners access to real estate, especially in desirable areas like resorts.

*2.2.2.4. Jewish.* This perception of the threat of real estate ownership is especially relevant when it comes to the Jewish community in Lithuania. Before the World War II 8% of the population of Lithuania were Jews (Vaitiekus 1992: 9), mostly concentrated in the cities due to the norms which prevented Jews from land ownership and agricultural pursuits. In fact, ethnic Lithuanians comprised the absolute majority of the rural population and sometimes a minority of the urban population. This functional and subsequently spatial segregation fed into an undercurrent of anti-Semitism that could be found in all Eastern European countries and that carries partial blame for the severity of the Jewish genocide in the lands occupied by Germany. Jews comprised as much as 30% of the inhabitants of

Vilnius, whereas today there are only several thousand Jewish people left (Eberhardt [1996] 2003). During the Holocaust Lithuania lost the largest percentage of Jews, and their presence was effectively marginalized in the public space and collective memory, further compounded by emigration to Israel whenever possible during the Soviet times.

To this day, the discussion of how much responsibility for the extermination of the Lithuanian Jewish population lies with the Germans, and how much with locals, keeps resurfacing every time a person who collaborated with the Germans on Holocaust is brought to trial. The public officials maintain the position of appeasement, for example, in a 1995 visit to Israel the President of Lithuania offered a public apology in the Kneset for the participation of Lithuanians in the genocide. However, a part of the public reacts to such pronouncements with resentment, claiming that the Soviets performed genocide on Lithuanians and yet they do not get acknowledged as equally evil by the world community in general and by Israel in particular (Stungurys 2007). This attitude is shored up by the fact that the first instances of mass murder of the Jews by Germans in Lithuania took place within a fortnight from the first wave of exile of Lithuanians to Siberia by the Soviets. Soviet propaganda paid a lot of attention to bashing fascism and employed Holocaust as an additional tool to discredit Lithuanian nationalists who had initially accepted Germans as liberators and established an interim government (before the German occupation officials disbanded such efforts within a couple months), which coincided with the first wave of mass extermination efforts in 1941. The fact that many Jews supported Soviet Union and that those who escaped from the ghettoes joined Soviet guerilla efforts alienated them from the majority of the Lithuanian population who perceived both Soviet Union and eventually Germany as equally evil. After the restoration of independence the predominant

position in the public discourse was that Jewish suffering has been sufficiently acknowledged and now it is time to acknowledge Soviet atrocities.[7] In the face of resentment produced by the multiplied attempts of foreign domination, many Lithuanians ultimately painted the Jewish community with the same brush as other ethnic minorities – as allies of enemies and therefore hostile. Earnest efforts by various governmental and nongovernmental organizations to educate the public about Holocaust and those Lithuanians who collaborated with the Nazis have somewhat muted the anti-Semitism in the public discourse, but it is far from gone.

Although Lithuanian – Israeli interstate relations are termed "very good" by officials, the relationship between Lithuania and the world Jewish community is a fragile shell, since it concentrates on restitution of property, most of which is in the heart of Lithuanian historical districts, defined as the so-called Old Town areas which used to be *the* town in the days when Jewish people comprised a significant part of the urban population. These areas which used to house Jewish shops and homes until the advent of the Second World War and were used as locations for ghettos during the German occupation have been reimagined as the heartlands of Lithuanian historical heritage. The mass media is teeming with commentaries from Lithuanians who see the "old towns" as belonging to them and are angered by the efforts of the world Jewish community to claim Jewish property. The issues related to the restitution of property are especially relevant for my research, since in Lithuania, as in numerous other postcommunist countries, restitution of property is connected to citizenship status, which is a source of friction above all with the world Jewish community who attempt to claim the property of heirless Lithuanian

[7] Discussion of the Lithuanian attitudes towards Holocaust and the Jews based on Bubnys (n.d.) and Tatarūnas (2009).

Jews, as well as the communal property (Barkan 2000; Eizenstat 1997; Geleževičius 2003). In fact, the issues related to Jewish property restitution served as one of the factors that prompted the critical juncture in Lithuanian dual citizenship regulation that is discussed in the subsequent chapter.

While the questions of restitution are relevant for people of all ethnicities, they are especially problematic when it comes to Jewish property due to the historical events in the context of Second World War and the interchanging occupations by USSR, then Germany, and then again USSR. The Soviet annexation of Lithuania in 1940 brought about nationalization policies, expropriating first and foremost the middle and upper class Lithuanians and sending many of them into exile, taking their factories and shops into the possession of the state and giving their homes to either public institutions or dwellings for the supporters of the Soviet regime. Since many Jews were supporters of Soviet Union, they were not treated quite the same way. On the other hand, during German occupation the expropriation of property focused exclusively on the Jews, allowing some of the local Lithuanian collaborators to take advantage of this as well. The property that was nationalized by the Soviets was basically within several months either reclaimed by its original owners or taken over by someone else if the original owners had been exiled, thus setting the precedent for changes in property ownership without the use of standard market procedures. With the retreat of the German army, the escape of some Lithuanians to the West in anticipation of the return of the Soviet occupation, and the loss of the casualties of the Second World War, there appeared more opportunities for some people to take over others' property. Finally, when the Soviet rule was reestablished, the nationalization processes resumed. During the span of several years, some property changed hands more

than once, confounding the possibility to determine proper ownership when it comes to restitution. Furthermore, since large scale private property did not exist in the Soviet Union, any larger estate was either used as a building for some public institution or divided into smaller apartments, providing additional confusion about the type of ownership.

When, as a part of the package of Westernization, Lithuania embarked on the road of denationalization of property, government officials encountered numerous situations where the possibility to determine who should be given the right of ownership of a piece of real estate was not quite straightforward. For example, most people were given the right of ownership of the apartment in which they lived in during the Soviet times. But if a building used to belong to one family before the Second World War and was converted into apartments by the Soviets in 1940s, who is to be given the right of ownership – the person whose ancestors owned the building in 1930s or the families living there for decades, for whom these apartments are the only home they ever knew? Incidentally, due to the predominance of Jews in interwar Lithuanian towns, many of such cases were of a former Jewish home now occupied by several Lithuanian, Polish or Russian families. The overlapping claims of ownership were especially pronounced in the case of Jewish property, and the fact that in many cases there were no heirs of the original owners, and instead it was the Jewish community trying to reclaim the property, weakened the weight of the Jewish demands for restitution in the eyes of the Lithuanian public.

Another ethnic group whose claim to property is perceived as not quite straightforward is the Poles who want to claim property from the period when the southeastern part of Lithuania was occupied by Poland. They can either be perceived as not really Polish and only "brainwashed" by Poland and therefore untrustworthy, or they

are really Polish and then they do not belong in this region and are therefore not worthy of having claims to property here. The discourse of property restitution is underscored by the conception of who can actually lay claim to Lithuanian real estate, and oftentimes representatives of ethnic minorities are not considered to have the same level of moral claims as ethnic Lithuanians due to their relationship with some state that has been a threat to Lithuania at some point in history.

The decision to limit property restitution to Lithuanian citizens and the establishment of the ethnic repatriation clause in dual citizenship regulation have to be understood in tandem as attempts to address the potential threat of giving extra resources to the ethnic minorities which may be not quite loyal to Lithuania or outright foreigners who cannot even be expected to have any loyalty to Lithuania. Such a perception of ethnic/national "others" as threats dovetails into the underlying conception of Lithuania as an ethnonationalist state which I discuss in the following section.

*2.2.3. Lithuania as an ethnonationalist state.*

The conception of Lithuania as an ethnic homeland of Lithuanians, together with the pronounced sense of historicity of both the achievements and the aspirations of the nation which need to be secured, and of the historical wrongs it has suffered from the big neighbors (read: Russia, Poland, and Germany) which needed to be righted and prevented from happening in the future, was laid into the foundation of the newly independent Lithuanian state. The evidence of such orientation is abundant in the explosion of public discussions in the 1988-1990 mass media and could fill volumes, but for the purposes of this thesis it is sufficient to concentrate on its expression in the development of the Constitution of Lithuania, the conceptual document on which the regulation of Lithuanian

citizenship has been built and which serves as the main reference point in the Constitutional Court's deliberations. In the previous chapter I discussed the presumption that Central and Eastern European postcommunist states are archetypically ethnonationalist, but their desire to belong to the Western political constellations like the EU and NATO serves as a moderating influence by prompting their compliance with international norms of nondiscrimination and moving the policies of these countries in a more civic direction. As I trace the process of creating the Constitution of the newly independent Lithuanian state, I look for textual evidence of both ethnonationalist orientation and acknowledgement of international norms, paying special attention to whether the latter actually moderate the former.

The Constitution of the Republic of Lithuania was drafted during the 1990-1992 period and adopted in October 1992 (until then Lithuania had an interim Constitutional law mostly based on the 1938 Constitution, but purged of its authoritarian elements). The first attempts were directly coordinated by the head of the state, but in November 1990 a working group for the preparation of the Constitution of the Republic of Lithuania was established. The protocols of the meetings of this working group which was tasked with the preparation of the draft of the Constitution provide many clues to tug-of-war between ethnonationalist and civic aspirations.[8] The records of the proceedings contain numerous references to "the commitment to guarantee the historical survival of the Lithuanian nation

[8] The documents of the drafting of the Constitution were accessed at the archives of the Parliament of the Republic of Lithuania in August and September of 2009 thanks to The Johns Hopkins University Leonard and Helen R. Stulman Jewish Studies Award for Pre-dissertation Research. The Paliament archives are in the process of construction, so the records have not yet been assigned case volume numbers, only laid out in a chronological order through several tentative volumes.

and the development of its national culture" (November 1990) and "the importance of the ecological existence and continuity of the nation" (January 1992).

*2.2.3.1. The conception of statehood and nationhood in the Constitution of the Republic of Lithuania.* One of the main bones of contention in the drafting of the Constitution was the concept of the nation. The common Lithuanian word 'tauta' primarily refers to the nation in the ethnic sense. The documents of the proceedings of drafting the Constitution reveal an awareness of its authors of why this word can be problematic. However, the problems were considered to be in the eye of the beholder, i.e. of the Western countries which feared that the quest for independence from the Soviet Union would lead to ethnonationalist violence, and not in the actual attitudes of the Lithuanians. Some drafters feared that explicitly defining the nation in an ethnic manner would hurt their cause by dissuading people of other ethnicities from supporting the goal of Lithuanian independence or be discordant with the international legal norms, some claimed that a nation is an organic entity that cannot be defined by law, and only one member of the commission explicitly called for a non-ethnocentric vision of the nation for the 21st century.

The initial outline of the Constitution produced in November of 1990 included a quite candid discussion of the implications of choosing one or another term. The working group wrote that it is difficult to decide how to name the sovereign subject – the people, the nation or the citizens of Lithuania. They suggested that using the term "Nation" ('*Tauta*') would require long explanations to the opponents regarding its true meaning. On the other hand, they acknowledged that the term "the people" was "totally suitable", but it had been deeply devalued due to demagogical overuse by the Soviet propaganda. The implications of the term "citizens" were not discussed in that particular outline.

Ultimately, the alternative proposals – to replace the word "nation" with words such as "people" or "citizens" – were rejected. The drafts that were discussed in 1990-1991 used the term "the nation of Lithuania". The protocols of the commission (January-February 1992) indicate an anxiety over whether a definition of a nation should be provided in the Constitution, or if it would become a polarizing issue. The draft of the Constitution that was circulated in January-March 1991 included a paragraph that defined the "nation of Lithuania" as consisting of "ethnic Lithuanians and people of other ethnicities who have traditionally been living in the [other versions: ethnographic] territory of Lithuania and consider themselves permanent residents of Lithuania [other versions: "consider themselves a part of this nation"], as well as other citizens of Lithuania". In a sense, such a definition establishes a certain hierarchy of various groups of the inhabitants of Lithuania, where ethnic Lithuanians are conceived as the core group, followed by autochtonous national minorities, and then listing the residual category of "other citizens of Lithuania", whereby the former colonizers from the USSR were excluded if they chose to keep their Soviet citizenship rather than take on a new Lithuanian one. In March 1992 the working group (as well as the left-wing opposition) proposed to define the "nation of Lithuania" as consisting of citizens of Lithuania. Such evidence was taken into account by the Constitutional Court in its November 2006 ruling, reasoning that the authors of the Constitution did not intend for a privileged position of ethnic Lithuanians.

One of the main variants of preamble was circulated in November 1991. It proposed to proclaim the Constitution based on "the history of the statehood of Lithuania and democratic traditions and Constitutional institutional continuity of the Republic of Lithuania, the ideals of humanism, democracy and social justice" and "universally

acknowledged principles of international law". The preamble of the draft also stated the intention to "guarantee free development of Lithuania and its people, the conditions for the historical persistence of the [ethnic] Lithuanian nation and development of national culture in the land of parents and ancestors" and to "develop friendly relations with other nations". It also emphasized the territorial integrity of the state of Lithuania, its "allegiance to the legal values universally acknowledged by the world community", and self-identification as a member of said community.

There were other suggestions for preambles that were more explicitly ethnonationalist. A 1991 draft proposed by Aloyzas Astravas, an American-Lithuanian from Boston, is very close to the preamble of the 1922 Constitution of Lithuania and can serve as a rather representative example of the orientations among the Lithuanian diaspora:

> In the name of God Almighty, the Nation of Lithuania, having suffered oppression and genocide, rejuvenated by the majestic past of the old Lithuania, gratefully commemorating its children's efforts and noble sacrifices made for liberating the Homeland, is restoring the continuity of the sovereignty of the independent State of Lithuania, so that it would, implementing the eternal right given to it by the Almighty Creator to be free and sovereign in its fartherland, guard with a unified will that which belongs to it through the ages, continue the honorable traditions of the Nation to live peacefully, and through the efforts of the current and future generations continue and cultivate the powers of sovereign Lithuania and the continuity of its statehood.
>
> This Constitution is established for Lithuania through the experience given to the nation of Lithuania by its antiquity and past stateness, its renaissance and fights for independence, the flourishing of independent Lithuania, desperate resistance against decimation of the Nation, which has brought about the restoration of the continuation of a sovereign State of Lithuania.

Even though this proposal talks about the "state of Lithuania" and "nation of Lithuania" instead of using the more ostensibly ethnic concept of the nation, the imagery is saturated with the ethnonationalist conception of what the state of Lithuania is all about. In November of 1990, another Lithuanian-American, Algimantas Gureckas, provided not

only a proposal of the main principles to be enumerated in the Constitution, but also explicit justification for basing it mostly on the interwar Constitutions (1922 and 1938), stating that examples of Constitutions of foreign countries can be of little help when it comes to the basic principles of Lithuanian statehood. He mostly focused on the historical continuity between the newly independent state and the Lithuanian Grand Duchy.

The preamble of the final text of the Constitution that was presented for public discussion in April 1992 and adopted in a referendum in November 1992 used the grammatical form of the term "Lithuanian nation" (*lietuvių tauta*) in the ethnic sense rather than the more civic sounding "nation of Lithuania" (*Lietuvos tauta*), referred to its native language and the birthright to live and create in the land of forefathers, and did not provide a definition of the nation (an alternative proposal that defined "the nation of Lithuania" as "the historical community of the citizens of the state of Lithuania", which again was explicitly aimed against post-war 'colonial' immigration, was not adopted), thus leaving an opening for either interpretation (see Kalvytė 2008).

Article 2 of the adopted Constitution reiterates that "The state of Lithuania is created by the Nation. The Nation is sovereign.".[9] Article 3 states that "No one may restrict or limit the sovereignty of the Nation or make claims to the sovereign powers belonging to the entire nation. The Nation and each citizen have the right to resist anyone who encroaches on the independence, territorial integrity, and Constitutional order [meaning a democratic republic as opposed to an authoritarian (communist or any other) state] of the

[9] I follow the capitalization used in the original text. I provide direct translation of the Lithuanian text of the Constitution (http://www3.lrs.lt/home/Konstitucija/Konstitucija.htm) rather than the official English version (http://www3.lrs.lt/home/Konstitucija/Constitution.htm), since the English version does not always provide a verbatim translation (e.g. the verb tenses differ), and since the Lithuanian version is the one quoted in all official documents, in the reasoning of the Constitutional Court, and in the public discourse.

State of Lithuania by force.". Article 10 reaffirms the territorial unity of the Lithuanian state, and Article 14 designates Lithuanian as the official language of the state. These statements are aimed directly against any claims Soviet Union/Russia might make, as well as against the pursuits of the Polish minority, and could even be extended towards a vague possibility of German claims to the seaside region. The preliminary draft circulated in January 1991, which helps to identify the reasoning behind the current Constitution, was more wordy on the issue of territorial integrity and expressly forbade internal division of the unitary territory of the state for any other purposes than administration. It also explicated on the role of Lithuanian language as the official state language, specifying that it was to be used in all institutions and organizations, and that an additional language of an ethnic minority could be used alongside Lithuanian, but not instead of it. The January 1991 draft also used the concept of "regional minorities" alongside "ethnic minorities", hinting at the skepticism with which the self-identification of the inhabitants of southeastern Lithuania as Poles is perceived.

*2.2.3.2. International norms and influence in the drafting of the Constitution of the Republic of Lithuania.* International norms of nondiscrimination are also entrenched in the Constitution. The second chapter of the Constitution, titled "The Human Being and the State", which includes Articles 18-37, establishes a range of civil and political rights, such as the right to privacy and due process, freedom of speech and of association, electoral and petition rights, etc., that are directly copied from the Constitutions of Western democratic states. In fact, the November 1990 annotated outline of the Constitution explicitly proclaimed that it was necessary to "include the rights and freedoms named in the main international legal acts, while avoiding mentioning names of international legal acts or their

priority over Lithuanian laws in the text of the Constitution". A 1991 outline of the conception of the Constituton labeled these rights as "universally acknowledged fundamental human rights and freedoms". Minutes of the meetings of the Constitutional Commission revealed that enumeration of rights is considered unproblematic – the sentiment was expressed on January 20, 1992, by D.Morkūnas, and on January 27th, 1992, by K.Lapinskas, both stating that the chapter on the rights and freedoms of citizens can go straight to the working group, since they are not controversial, but was not rebuffed by anyone present.

The head of the state, Vytautas Landsbergis, who at first acted as the head of the working group that drafted the Constitution, used direct consultations with foreign laywers/scientists solicited by the World Lithuanian Community, Lowry Wyman, J.D., of Harvard University and then the University of Pennsylvania, and her husband Barnabas D. Johnson, Esquire. Proposing their help in May 1990, they stated goals like "managing the transition from a fundamentally lawless system to a lawful one, including promoting ways of avoiding preoccupation with "settling scores" – thereby encouraging participation of all citizens within the new society, regardless of their roles within the old", or "generally reforming the legal, administrative, and economic infrastructure to conform with international norms". In a June 1990 memorandum Lowry Wyman provided notes based on her discussion with Laurence Tribe of Harvard Law School regarding the preparation of the Lithuanian Constitution. She starts her notes by heavily emphasize the importance of international norms and nondiscrimination:

> The Lithuanian Constitution should protect everybody. In order to be credible internationally, the Lithuanians should produce a fair Constitution (imagine reading it through the eyes of an opposition group or the outside – the USSR or the West). <…> Very few rights should be

> limited only to citizens. See Constitutions of Canada, FRG, and Spain. There are numerous problems with the draft Czech Constitution; these are similar to those of the Lithuanian Provisional Basic Law. There should be much stronger and fuller protection of minorities. Query whether this should be achieved through greater protection of individual rights or the creation of group rights.

In other memorandums from August 1990, Lowry Wyman and Barnabas D. Johnson again mentioned the relevance of "public relations", "a decent respect for the opinions of mankind", and the Lithuanians' perception of their help and of Westerners in general as having "much to contribute to Lithuania's quest to constitutional democracy. They pointed out that "the international response might have been more favorable if the whys and wherefores" of the restoration of independence were proclaimed instead of focusing on the proclamation of independence per se. The goal of independence, in their view, should have been stated as a desire "to create a Constitutional democracy of free and equal citizens, a republic based on majority rule that respects minority and individual rights, and all the rest that Lithuania presumably aspires to".

In a November 1990 memorandum Barnabas D. Johnson implores the decision-makers of the Constitutional process to "welcome all current residents of Lithuania to join your endeavor to lay aside ancient antagonisms and build a multi-ethnic new Lithuanian Republic based on equality of opportunity, the protection of human rights, and all those other precious values underlying modern Constitutional democracies", and warns them that the imperatives of globalization should counteract the inclinations towards "righteous anger". As I discussed in the preceding chapter, this inclination towards righteous anger is a product of postcolonial experiences. Interestingly, in her presentation at the First International Andrey Sakharov Memorial Congress on Peace, Progress, and Human Rights

held in May 1990 in Moscow, Lowry Wyman labeled Lithuania as a "former Soviet colony".

In a December 1990 memorandum to the Lithuanian head of the state, Lowry Wyman provides notes from a Heritage Foundation policy analyst Douglas J.Seay, who tries to explain that the West, and especially the USA, anxiously perceive the striving for independence from the USSR as a potential source of instability due to the threats of nuclear proliferation or ethnic conflict, more specifically, persecution of ethnic minorities by the newly independent states. While the former did not apply to Lithuania as much, the latter was one of the main targets for the tension between domestic imperatives and international norms.

In another December 1990 memorandum, Lowry Wyman pinpoints that the concept of the Nation is one two main issues of contention in the preparation of the Constitution next to the question of presidential institution. The first of the two issues is directly relevant to this thesis. The memorandum extols the benefits of the concept "the people of Lithuania" which is "a much broader concept than "the Lithuanian nation," and looks to the future rather than to the past[10]. "The people of Lithuania" is a concept that is capable of embracing people of different ethnic backgrounds who support the Republic of Lithuania and its Constitutional order.".

The official documents do not contain many verbatim suggestions from these consultants, and their frustration with the Soviet-style language and reasoning ingrained in the majority of the representatives of the legal profession is repeatedly expressed in their

[10] In their constant prompting to look to the future rather than the past, Wyman and Johnson in yet another December 1990 memorandum go as far as cautioning the government to beware of the pitfalls of restitution in light of the layered confiscations of property during Nazi and Soviet times.

letters contained in the archives of the proceedings of the Constitutional Commission. Lowry Wyman called a two page outline of the conception of the Constitution produced by the working group "the jottings of unfocused thinkers who are drenched in Communist law" and "an abysmal product", warned that "if you send this abroad, Lithuania will become the laughing stock of the civilized world", suggested disbanding this Commission, and implored to "create something worthy of the people who have died for Lithuania", saying that "they, and their children, deserve better". Barnabas D. Johnson also was not short of lofty expressions, stating in his letter to the then-head of the Lithuanian state Vytautas Landsbergis that "the new Constitution of Lithuania is by far the most important and precious gift you and your generation of patriots can ever hope to give to your beloved country" and asking to let him and the other consultant rest at night so they could do their best when drafting the text. The draft proposed by the American consultants in February 1991 was markedly different from the one drafted by the Lithuanian working group which ultimately served as the basis for the Constitution adopted in 1992. It used notions like "the people of Lithuania" instead of referring to the nation in any form, proposed to print the text of the Constitution not only in Lithuanian, but also in Russian, Polish and English, and explicitly stated that "The people of Lithuania intend by this Constitution to base their Republic upon a foundation of Western Constitutional democracy, political wisdom, administrative experience, good governance, reason, justice, equity, and law. The people therefore intend, and hereby instruct, that the words and phrases of this Constitution be interpreted in light of the meaning given to them by the historical usages of the Western legal tradition and by the best judicial and scholarly interpretations of other Constitutional democracies". Their proposed text was perceived as "too American" in style, for example,

continuously starting pronouncements with "We, the people…", but the fact that it was also circulated as a part of the deliberations during the Constitution drafting process supports the idea that the advice from foreign experts was taken seriously by those who prepared the Constitution for Lithuania.

*2.2.3.3. Ethnicity in the Constitution of the Republic of Lithuania.* One should also take into account Article 45 contained in the third chapter (titled "Society and the State") which states that "Ethnic communities of citizens independently manage the affairs of their ethnic culture, education, charity, and mutual assistance. The state provides support to the ethnic communities." The goal of the prevention of potential ethnic conflict and ethnic discrimination in postcommunist states was one of the main points of concern for the West, and this article can be seen as an attempt to appease such concerns. However, it very clearly limits the areas in which ethnic minorities can exercise their autonomy to the cultural sphere, foreclosing, for example, potential claims to territorial autonomy.

For the purposes of this thesis, two articles – Article 29 and Article 32 – in the second chapter of the Constitution hold special relevance. Article 29 prohibits discrimination, or, more specifically, states that "The rights of the human being may not be restricted, nor may he be granted any privileges on the grounds of gender, race, nationality/ethnicity [it could be argued which translation is more appropriate for the Lithuanian word '*tautybė'*, which is grammatically derived from the ethnic conception of the nation '*tauta*', but is also used to designate nationality of a country, such as "American", for lack of another term in the Lithuanian language], language, origin, social status, beliefs, convictions, or views." This article was employed in the challenge to Lithuanian citizenship regulation that is discussed in the next chapter. On the other hand,

Article 32 establishes freedom of movement for citizens of Lithuania, but also adds that "Everyone who is Lithuanian may settle in Lithuania.", ultimately establishing the privileged relationship between ethnic Lithuanians and the Lithuanian state. Some of the drafts of 1991 and 1992 suggested to regulate acquisition of citizenship by giving it to any Lithuanian once they settle in Lithuania or to any person of a different ethnicity after they have resided in Lithuania for 10 years. Such contradictory inclusion of both express interdiction against discrimination or privilege and express acknowledgement of the special status of ethnic Lithuanians have served as fodder for many debates related to the 2006 case of Lithuanian citizenship regulation.

Overall, the records of the working group who prepared the draft of the Constitution in tandem with the current text of said Constitution reveal the picture of a state with ethnonationalist orientation that is nevertheless aware of the need to toe the line of international norms of nondiscrimination and has some proponents of a more civic orientation. It is evident that movements away from ethnonationalism and towards nondiscrimination are related both to genuine socialization into Western norms and mere attempts to appease the West without necessarily internalizing said norms. International norms of nondiscrimination coexist with the privileged relationship between ethnic Lithuanians and the Lithuanian state, highlighting the conditions of possibility of discursive contention that is discussed in more detail in the subsequent chapter. For now, we have established the status of Lithuania as an ethnonationalist postcolonial state, let us turn next to establishing its status as an emigration country.

*2.2.4. Lithuania as an emigrant-sending state.*

*2.2.4.1. 19th century.* In terms of immigration and emigration countries, Lithuania has always been in the latter camp. Large scale emigration started in the last third of 19th century due to the combination of deteriorating economic and political conditions in the Russian empire, and reached its peak before the First World War. The most modest estimates place the number of emigrants who left for the three main destinations – USA, UK and Russia – between 1897 and 1914 at approximately 325 000.

*2.2.4.2. Interwar Lithuania and Soviet occupation.* After Lithuania became an independent republic in 1918, the socioeconomic hardships of state-building and a surplus labor force prompted another wave of emigration, mostly to the Americas, which subsided only in the early 1930s due to the world economic crisis.

Table 2.2. Migration from interwar Lithuania.

| | Emigrants by destination country | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Year** | **Total population** | **Number of emigrants** | **Emigration rate per 1000 inhabitants** | **Argentina** | **Brazil** | **Canada** | **Palestine** | **South Africa** | **United States** | **Urugway** | **USSR** | **Other countries** |
| 1923 | | 2 693 | 1,3 | 112 | 33 | 112 | | 16 | 1 845 | 33 | | 542 |
| 1924 | | 3 051 | 1,4 | 499 | 24 | 195 | 476 | 38 | 861 | 141 | | 817 |
| 1925 | | 2 869 | 1,3 | 689 | 22 | 112 | 377 | 72 | 778 | 85 | | 734 |
| 1926 | 2 227 502 | 10 364 | 4,6 | 1 353 | 5 669 | 969 | 202 | 106 | 1 090 | 229 | | 746 |
| 1927 | | 18 086 | 8,0 | 1 995 | 11 702 | 1 040 | 56 | 409 | 1 429 | 571 | | 884 |
| 1928 | | 8 491 | 3,7 | 2 151 | 1 199 | 2 165 | 39 | 970 | 751 | 709 | | 507 |
| 1929 | | 15 999 | 6,9 | 6 095 | 4 536 | 1 335 | 146 | 1 238 | 967 | 1 394 | | 288 |
| 1930 | 2 367 042 | 6 428 | 2,7 | 2 280 | 836 | 869 | 85 | 791 | 683 | 763 | 4 | 121 |
| 1931 | 2 392 983 | 1 756 | 0,7 | 189 | 41 | 83 | 118 | 460 | 320 | 206 | 305 | 339 |
| 1932 | | 1 001 | 0,4 | 74 | 66 | 80 | 194 | 291 | 151 | 73 | | 72 |
| 1933 | | 1 300 | 0,5 | 92 | 90 | 45 | 671 | 200 | 130 | 34 | | 38 |
| 1934 | | 1 521 | 0,6 | 130 | 137 | 54 | 646 | 267 | 181 | 59 | | 47 |
| 1935 | | 1 911 | 0,8 | 199 | 165 | 22 | 943 | 256 | 185 | 45 | | 96 |
| 1936 | | 1 707 | 0,7 | 270 | 370 | 70 | 501 | 262 | 138 | 55 | | 41 |
| 1937 | | 979 | 0,4 | 298 | 40 | 39 | 50 | 155 | 288 | 58 | | 51 |
| 1938 | 2 575 363 | 811 | 0,3 | 185 | 24 | 39 | 101 | 110 | 273 | 4 | | 75 |

Source: Lithuanian Department of Statistics (www.stat.gov.lt), last accessed on October 1st, 2014.

Immediately after the Soviet occupation of Lithuania and the Second World War another 60 000 people emigrated to the West. Emigration combined with war casualties and forced exile to Siberia deprived Lithuania of a third of its inhabitants. Due to the iron curtain there was hardly any movement to or from the West during the 1950s-1980s. The influx of people from the other countries of the Soviet Union was not as significant as in Latvia and Estonia.

*2.2.4.3. After restoration of independence.* Today Lithuania is facing a similar demographic challenge, sporting a consistently negative migration saldo and the largest emigration in EU in terms of ratio per 1000 inhabitants (see Table 2.3 for migration in the recent decades).

Table 2.3. Lithuanian migration in 2001-2013.

| Year | Total population | Emigrants | Immigrants | Emigration rate per 1000 inhabitants | Immigration rate per 1000 inhabitants | Net migration rate per 1000 inhabitants |
|---|---|---|---|---|---|---|
| 2001 | 3 486 998 | 27 841 | 4 694 | 8,0 | 1,3 | -6,7 |
| 2002 | 3 454 637 | 16 719 | 5 110 | 4,9 | 1,5 | 3,4 |
| 2003 | 3 431 497 | 6 283 | 4 728 | 7,7 | 1,4 | -6,3 |
| 2004 | 3 398 929 | 37 691 | 5 553 | 11,2 | 1,7 | -9,5 |
| 2005 | 3 355 220 | 57 885 | 6 789 | 17,4 | 2,0 | -15,4 |
| 2006 | 3 289 835 | 32 390 | 7 745 | 9,9 | 2,4 | -7,5 |
| 2007 | 3 249 983 | 30 383 | 8 609 | 9,4 | 2,7 | -6,7 |
| 2008 | 3 212 605 | 25 750 | 9 297 | 8,1 | 2,9 | -5,2 |
| 2009 | 3 183 856 | 38 500 | 6 487 | 12,2 | 2,1 | -10,1 |
| 2010 | 3 141 976 | 83 157 | 5 213 | 26,9 | 1,7 | -25,2 |
| 2011 | 3 052 588 | 53 863 | 15 685 | 17,8 | 5,2 | -12,6 |
| 2012 | 3 003 641 | 41 100 | 19 843 | 13,7 | 6,6 | -7,1 |
| 2013 | 2 971 905 | 38 818 | 22 011 | 13,1 | 7,4 | -5,7 |

Source: Lithuanian Department of Statistics (www.stat.gov.lt), last accessed on October 1st, 2014.

According to estimates by the Department of Statistics of Lithuania[11], since the break-up of the Soviet Union about 660 000 inhabitants left the country, mostly headed for

[11] Data obtain from the official website of the Department of Statistics of Lithuania http://www.stat.gov.lt, 2012-01-08.

the Western world, increasingly into the more affluent countries of the EU, reflecting the general trend in destinations of Central and Eastern European migrants (85% to Western Europe and 15% to USA (Morawska 2001)). A smaller, Eastward migration flow, which reached its peak in 1992-1993, mostly consisted of non-Lihtuanian people returning to Russia or other former Soviet Union countries (Stankuniene 2000; Smith and Shaw 2006: 15).

Many of the emigrants who went to the West did not declare that they are leaving, partly due to awareness of their status as irregular migrants who overstay their tourist/student visas, and partly due to ignorance of bureaucratic procedures.

Table 2.4. Undeclared emigration from Lithuania, 2001-2009.

| **Year** | **Undeclared emigrants, in thousands** | **Undeclared emigrants 15 years old or older, in thousands** |
|---|---|---|
| 2001-2002 | 23.2 | 19.6 |
| 2003 | 11.7 | 10.9 |
| 2004 | 17.3 | 16.3 |
| 2005 | 32.5 | 28.1 |
| 2006 | 15.2 | 13 |
| 2007 | 12.7 | 12 |
| 2008 | 6.7 | 6.4 |
| 2009 | 12.7 | 12.4 |

Source: Lithuanian Department of Statistics (www.stat.gov.lt), last accessed on October 1st, 2014.

When Lithuania became a member of the EU in 2004 and Ireland, United Kingdom and Sweden did not place any restrictions on the free movement of persons (other EU members did place restrictions ranging from 2 to 7 years), undeclared emigration doubled (see Table 2.4) and was reigned in only by the 2010 requirement to declare emigration if one wanted to avoid having to pay the mandatory governmental health insurance fee (the data for 2010 in Table 2.3 should be interpreted with this new law in mind).

Table 2.5 breaks down the more current migration flows by citizenship and shows that both emigration and immigration flows are dominated by Lithuanians.

Table 2.5. Migrants by citizenship, 2009-2013 (Em. – emigrants, Im. - immigrants).

| **Citizenship** | **2009** | | **2010** | | **2011** | | **2012** | | **2013** | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Em. | Im. | Em. | Im. | Em. | Im. | Em. | Im. | Em. | Im. |
| Lithuanian | 33 522 | 4 821 | 79 315 | 4 153 | 51 505 | 14 012 | 38 479 | 17 357 | 35 492 | 18 975 |
| Belorussian | 1 055 | 438 | 1 180 | 255 | 666 | 254 | 631 | 363 | 796 | 486 |
| Russian | 675 | 312 | 560 | 248 | 422 | 373 | 422 | 526 | 650 | 774 |
| Ukraine | 895 | 209 | 567 | 145 | 312 | 181 | 450 | 377 | 565 | 413 |
| USA | 127 | 47 | 149 | 32 | 92 | 34 | 92 | 28 | 104 | 18 |
| Other countries | 1 915 | 645 | 1 348 | 370 | 835 | 819 | 967 | 1 184 | 1 174 | 1 337 |
| Stateless | 311 | 15 | 38 | 10 | 31 | 12 | 59 | 8 | 37 | 8 |
| Total | 38 500 | 6 487 | 83 157 | 5 213 | 53 863 | 15 685 | 41 100 | 19 843 | 38 818 | 22 011 |

Source: Lithuanian Department of Statistics (www.stat.gov.lt), last accessed on October 1st, 2014.

As evidenced by the data presented in Table 2.5, the majority of both emigrants and immigrants are Lithuanian, which underlines the centrality of the concern with co-ethnics when it comes to Lithuanian migration issues. Furthermore, even some of the migrants who hold Belorussian, Russian or American citizenship are of ethnic Lithuanian ancestry. Among the rest of the migrants, the majority fall under the rubric of family migration due to marriage, but their numbers are sufficiently low to prevent them from prominently figuring in the discourse on migration. Keeping in mind the numbers presented in Table 2.5, when migrants are discussed in this thesis, one should assume they are Lithuanians, unless explicitly stated otherwise.

As of 2013, Lithuania had 2.971 million inhabitants (see Table 2.3). Thus, the new emigration (defined as those who leave for longer than six months), which could potentially aspire to dual citizenship, amounts to 20 percent of the Lithuanian population. Combined with earlier waves of emigration, persons of Lithuanian origin residing abroad comprise

about one fourth to one third of the Lithuanian nation (Praninskas 2006). The tensions of the relationship between the state of Lithuania and various generations of migrants form part of the discourse on dual citizenship, which are addressed in the subsequent chapter. For the purposes of the current chapter, we can summarize the main point: Lithuania is quintessentially an emigration state with ethnonationalist characteristics, hence its citizenship regulation should reflect the expected position of an emigrant-sending state by gradually expanding the possibilities for dual citizenship with a preference for co-ethnics. In the next section I trace the development of the regulation of Lithuanian citizenship and compare its characteristics with the scholarly predictions regarding the behaviour of an emigration state.

### *2.3. Development of regulation of dual citizenship*

#### *2.3.1. Interwar Lithuanian citizenship.*

The interwar Lithuania had to balance between the realities of emigration and the threat of neighboring countries; thus dual citizenship was prohibited in the Constitution of 1922, with the commentary pointing specifically at dangers of Poland and Russia, both of whom had territorial disputes with Lithuania and refreshed centuries-old historical grievances. At the same time, in the Constitution of 1928 an exception was allowed for those who had emigrated to the Americas.[12] As evidenced by the data presented in Table 2.2, the latter group of migrants comprised the majority of emigrants. This fact should be kept in mind as a parallel to the situation as described by the Constitutional Court in the

[12] Discussed in Constitutional Court of the Republic of Lithuania. 2006. Ruling "On the Compliance of the Provisions of Legal Acts Regulating the Citizenship Relations with the Constitution of the Republic of Lithuania." Case No. 45/03-36/04. Vilnius, 13 November 2006.

2006 ruling where it lamented the exception becoming the rule when it came to the availability of dual citizenship.

Those who escaped the Soviet occupation during the Second World War held onto the passports of the interwar Lithuanian Republic and connected with the network of diplomats from various embassies of Lithuania which campaigned for non-recognition of the annexation of Lithuania into the Soviet Union. Meanwhile, right after the annexation, in September 1940, the occupying powers decreed all citizens of Lithuania to be citizens of the Soviet Union, and in 1941 the administration of the Soviet Lithuania even declared everyone who had been permanent residents of Lithuania on September 1st, 1939, to be citizens of the Lithuanian Soviet Socialist Republic, not giving anyone any choice (Sinkevičius 2000). As the iron curtain prevented almost everyone from crossing the border, having a USSR citizenship did not play a large role. Lower level citizenship was much more important due to the Soviet system of registration which prevented free movement of people within the territory of the USSR. Combined with the practice of assigning people to workplaces, we cannot meaningfully talk about freedom of movement and internal migration, and due to the authoritarian nature of the Soviet state we cannot meaningfully talk about the meaning of USSR citizenship beyond its role as a tool of state control over individuals. Thus the discussion of citizenship regulation becomes meaningful only with the independence restoration movement.

*2.3.2. Citizenship guidelines in the Constitution of the restored Republic of Lithuania*

Article 12 of the Constitution adopted in 1992 concerns citizenship and serves as the crucial reference point in the deliberations of the Constitutional Court. It states that

"The citizenship of the Republic of Lithuania is acquired by birth and on other grounds established by law. With the exception of individual cases provided for by the law, no one may be a citizen of both the Republic of Lithuania and another state at the same time. The procedure for the acquisition and loss of citizenship is established by law." I discuss the more specific development of the laws regulating citizenship later in this chapter. For now it is important to establish that Article 12 essentially amounts to a prohibition of dual citizenship, mostly targeting the colonizers from the Soviet Union, but leaves an opening to determine exceptions which would allow for dual citizenship. On the other hand, it is interesting to note that the January 1991 draft of the Constitution had put forth the proposition that Lithuanian citizenship could be acquired based on the *ius soli* principle unless otherwise specified by the law. This formulation did not make it into the later draft, but still allows us to appreciate the thread of a more civic that ethnic orientation existing during the process of the drafting of the Constitution.

The position of citizenship regulation changed in various drafts of the Constitution. For example, the first draft, prepared in May 1990, only stated that the conditions and procedure of acquisition and loss of citizenship are determined by law. The annotated outline produced by the working group in November 1990 acknowledged that the questions of dual citizenship and the possibility to strip someone of their citizenship were problematic without specifying what exactly those problems were nor how they could be addressed.

A look at the January 1991 draft of the Constitution reveals that the initial intention was to state the position on dual citizenship in an even stricter way. It expressly stated that a citizen of the Republic of Lithuania could lose his/her Lithuanian citizenship if s/he took a citizenship of another country, and that the exceptions which would allow for dual

citizenship would have to be designated in the Constitution. A retreat from this position could partly be explained by the fact that it is extremely difficult to change this part of the Constitution. Different chapters of the Constitution have different requirements for amendments, and the first chapter on the fundamentals of the state, in which the Article 12 on citizenship is located (as well as the fourteenth chapter on the rules of Constitutional amendments), can only be changed by a referendum with a turnout of more than 50% of voters and a majority of them voting in favour, which has only been achieved four times: in 1991 to confirm that Lithuania is to be an independent democratic state, twice in 1992 – in June to demand the removal of the Red Army and compensation for the harm inflicted by the Soviet annexation, and in October to adopt the current Constitution of the Republic of Lithuania, and in 2003 to confirm membership in the European Union. The rest of the chapters of the Constitution require repeated voting by a qualified majority of the members of the Parliament, and only two amendments, both related to the membership in the European Union, have been successfully passed by the Parliament. Any other attempts to initiate an amendment through a referendum have failed to garner the necessary number of either the signatures for the initiation of a referendum, or votes, including the failed referendum in June 2014 which strived to cut the required number of signatures from 300 000 to 150 000. The rather high requirements for the initiation of a referendum were installed as one of the safeguards against those with subversive intentions towards Lithuanian territorial integrity or Westward geopolitical leanings (such as the 147 040 citizens who voted against Lithuanian independence in a 1991 plebiscite, 140 077 who voted against the removal of Soviet Army from the territory of Lithuania in a 1992 referendum, or 147 527 who voted against Lithuanian membership in the EU in a 2003

referendum) (Vyriausioji rinkimų komisija 2012). The difficulty related to changing the Constitution through referenda should be kept in mind when discussing the public discourse regarding the November 2006 ruling in the next chapter.

*2.3.3. Citizenship law during the restoration of independence.*[13]

The initial Lithuanian Citizenship Law was passed in 1989 by the newly elected nationalist-dominated parliament before the country even declared the restoration of its independence. It was considered to be quite civic in comparison to the other Baltic countries which had a much more acute problem of the proportions of the ethnic composition of their populace. In contrast to Latvia and Estonia, where the titular nation was at risk of becoming an ethnic minority due to the large-scale influx of Russians and other ethnicities from the Soviet Union, ethnic Lithuanians amounted to over 3/4 of the population of Lithuania (see Table 2.1 above), effectively foreclosing the possibility to achieve public legitimation of the radical rhetoric of ethnic preservation.

The politicians strived to avoid treating the Soviet annexation of Lithuania as legitimate in any way, framing the initial Citizenship Law as a tool of transition to the restoration of Lithuanian citizenship in continuity with the interwar Republic of Lithuania, but they also acknowledged the need to deal pragmatically with the realities of colonial migration from the USSR during the 50 year annexation period (Sinkevičius 2000). The 1989 Citizenship Law designated all those who held Lithuanian citizenship before Soviet occupation and their descendants to be Lithuanian citizens if they resided in Lithuania. It also provided the so-called "zero option" by allowing any resident of Lithuania who immigrated there during the Soviet rule to choose either Lithuanian or USSR citizenship

[13] The texts of subsequent laws on citizenship were retrieved from the website of the Parliament of the Republic of Lithuania www.lrs.lt.

within a two year period. It is important to note that, despite its civic credentials, this law was chosen explicitly as an instrument of ethnic policy, meant to serve as a safeguard against inter-ethnic tensions and prevent further immigration from Russia (Sinkevičius 2002: 123-124). A representative survey was carried out in the summer of 1989, asking whether people would prefer to have only Lithuanian citizenship, only USSR citizenship, or both, and the results showed that it would not have been prudent to impose Lithuanian citizenship across the board, but that it was safe to assume that, given a choice, the majority of the population would choose to have it. 99.2% of ethnic Lithuanians would choose to have only Lithuanian citizenship instead of the USSR citizenship, compared to 42% of the representatives of ethnic minorities, and only 8% of ethnic minorities and no ethnic Lithuanians would have chosen to have only USSR citizenship (Černiauskas, Lapinskas, Namavičius and Stačiokas 1989, as cited in Sinkevičius 2000: 27-28). During the two-year transitional period, all residents of Lithuania were allowed to exercise the rights of a citizen of Lithuania. Ultimately, 90 % of non-Lithuanians did choose Lithuanian citizenship over that of the USSR (Krūma 2007: 91). The provision of the zero-option was a successful choice, as it prevented the potential escalation of ethnic cleavages and earned Lithuania a reprieve from close scrutiny and criticism by the Council of Europe or any other international institution to which Latvia and Estonia were subjected.

Giving the choice to the people provided a certain litmus test of the loyalty of the potential citizens to the independent Lithuanian state, and the period of expressing their preferences ended in 1991 when the drafting of the Constitution was underway. If we recall the formulations of the definition of the "nation of Lithuania" as consisting of ethnic Lithuanians, autochthonous ethnic minorities and other Lithuanian citizens, circulated in

January-March 1991, we can see that those colonizers who opted to remain citizens of the USSR rather than take on Lithuanian citizenship were effectively designated as being outside of the boundaries of Lithuanian nationhood and statehood. A significant part of those who retained Soviet citizenship instead of getting that of Lithuania consisted of the officers of the Red Army. They were denied the possibility to gain Lithuanian citizenship as direct aggressors, and when the Constitutional Court was addressed with a complaint regarding such practices, it emphasized in its ruling that these people are essentially foreigners and should go through the path of naturalization accordingly.[14] The 1989 law listed the requirements of 10 year permanent residency, a legal source of income, and passing a test on Lithuanian language and the Constitution as requirements for naturalization, and forbade naturalizing those who participated in the genocide.

The 1989 Law on Citizenship also established the notion of "retaining the right to citizenship" (Article 22). This right pertained to the persons who were exiled or escaped from occupied Lithuania after 1940, as well as their children and grandchildren. Ethnic Lithuanians were acknowledged as having a right to gain Lithuanian citizenship if they moved to Lithuania and gave an oath to the Republic. The 1989 law did not explicitly address the possibility of dual citizenship, but, combined with the residence requirements and the prohibition of dual citizenship in the interim, and later the permanent, Constitution, we can conclude that dual citizenship was not readily available to the members of Lithuanian diaspora. Some retired emigrants came to Lithuania and established residence

[14] Constitutional Court of the Republic of Lithuania. 1994. Ruling "On the Compliance of the Seimas of the Republic of Lithuania Resolution "On Amending Item 5 of the Resolution of the Supreme Council of the Republic of Lithuania 'On the Procedure for Implementing the Republic of Lithuania Law on Citizenship', adopted on 22 December 1993, with the Constitution of the Republic of Lithuania." Case No. 7/94. Vilnius, 13 April 1994.

here, taking advantage of the eligibility for Lithuanian citizenship, but it was not a massive phenomenon.

*2.3.4. Citizenship regulation during the first decade of independence.*

After the two-year window the transitional period ended, the Parliament adopted a new law on citizenship on December 5, 1991, which remained valid for over a decade. The zero option was closed, and the law laid out the general rules for citizenship acquisition.

Contrary to expectations of a typical emigration country behavior, the law stated that, as a rule, a Lithuanian citizen could not carry dual citizenship, except in situations listed in this law. It added the loss of previous citizenship as a requirement for both naturalization and for ethnic Lithuanians gaining Lithuanian citizenship on the grounds of "retaining the right to Lithuanian citizenship". The parents of children who would be eligible for two citizenships were told to choose the child's citizenship. Gaining another state's citizenship was listed as grounds of losing Lithuanian citizenship.

The 1991 law instituted the notion of repatriation, namely, migration of members of ethnic minorities to their kin states. Those descendants of interwar citizens who repatriated to their ethnic homelands were denied the possibility of "retaining the right to Lithuanian citizenship" available to ethnic Lithuanians. It had to do both with historical distrust towards Poland and Russia and with more contemporary concerns with potential threats, since ethnicity is seen as a more powerful basis of loyalty if a conflict among both countries of citizenship arises (Girnius 2006). In contrast, Article 17 did not explicitly state the requirement to first prove the loss of another state's citizenship or to have residence in Lithuania for those who were descendants of interwar Lithuanian citizens, thus some members of the post-Second World War diaspora took advantage of the possibility and

applied for Lithuanian citizenship. Those undergoing a different chronological sequence and taking on a new citizenship after already having Lithuanian citizenship were deemed to lose their Lithuanian citizenship, thus foreclosing the possibility of similar advantages to the newer post-independence wave of emigrants. Their complaints eventually brought about a new version of the law on citizenship that came into effect in 2003.

*2.3.5. 2002 citizenship law and the expansion of dual citizenship.*

From its inception, Lithuania could have been considered to have one of the strictest dual citizenship regulation regimes in the EU (Bauböck *et al*. 2007; Howard 2005; Howard 2009; Liebich 2000). The exception in relation to dual nationality for pre-1990 Lithuanian émigrés was framed in terms of righting the historical wrongs and ultimately aimed at people who were deprived of Lithuanian citizenship by historical turmoil. This difference between post-Second World War displaced persons and the new 'voluntary' labor emigration is one of the undercurrents of tension in the public debates over dual citizenship, exposing the contradictory clusters of identitarian and material-interest-based concerns that shape the discourse on citizenship which is discussed in more detail in the subsequent chapter. Although the case which prompted the Constitutional Court to declare regulation of dual citizenship unconstitutional concerned pre-war citizenship, the main polarization of dual citizenship discourse in general referred to the new, post-independence migration. On the other hand, the right of the members of the pre-independence Lithuanian diaspora to dual citizenship had been an accepted fact in the Lithuanian political discourse due to its compensatory role.

With a steady build-up of post-independence emigration, more and more people found themselves in situations where they needed to take on the host country's citizenship in order to fully realize the opportunities available there, or where their children ended up with a different citizenship from their parents due to the requirement to choose one citizenship, such as those born in Ireland which practiced *ius soli* and did not even have a provision for renunciation of a child's citizenship. Representatives of the World Lithuanian Community repeatedly addressed the Parliament with requests to enable those Lithuanians who have left Lithuania and accepted another country's citizenship to not lose their Lithuanian citizenship. These demands culminated in a declaration by the joint Commission of the representatives of the Parliament of the Republic of Lithuania and USA Lithuanian community in June 2001, titled "Resolution regarding the citizenship of the Republic of Lithuania for persons of [ethnic] Lithuanian origin who have acquired the citizenship of another state", which recalled similar resolutions from March 10th and August 12th, 2000, appealed to the "conception of the integral nation", emphasizing that diaspora is an integral part of the Lithuanian nation, and pointed out that "the loss of Lithuanian citizenship complicates the relationship between the person and Lithuania, brings no benefit to Lithuania and lowers the number of the citizens of the Republic of Lithuania".[15]

These demands served as one of the main reasons for the draft of a new law prepared by Arminas Lydeka, MP from the liberal party, who pointed out that the Human

[15] Lietuvos Respublikos Seimo ir JAV lietuvių bendruomenės atstovų komisija "Rezoliucija dėl Lietuvos Respublikos pilietybės lietuvių kilmės asmenims, įgijusiems kitos valstybės pilietybę". Vilnius, June 8th, 2001. // http://www3.lrs.lt/docs3/kad4/W3_VIEWER.ViewTheme-p_int_tv_id=1732&p_kalb_id=1&p_org=0.htm.

rights committee of the Parliament approved the proposal.[16] The records of the September 17, 2002, proceedings of the deliberations in the Parliament regarding the new law reveal several political positions. Another liberal MP, Eligijus Masiulis, expressed support for the draft of the law on citizenship, emphasizing that there had been many discussions about dual citizenship and expressing satisfaction that it has finally moved from public statements to practical implementation. He argued that Lithuania does not have so many people "that it could take away or cancel the citizenship of those people who leave Lithuania for one reason or another and settle in other countries, taking on the citizenship of those countries". He states:

> In my understanding, it is very important for such a small nation like Lithuania to have the possibility to keep its citizens' citizenship despite where fate throws them. I think that this law really fits the realities and needs of life. The fact that several thousand American Lithuanians addressed the Parliament last year already asking for such a possibility shows that this law is not just a politicians' fancy. It is a law that matches existing realities, the needs of the citizens of the state and the Lithuanians of the world.

Another MP from the liberal party, Jonas Jučas, echoed his colleague's ideas, expressing satisfaction with the new law for being "significantly more modern" than the preceding laws, for fitting "the spirit of times" and "the goals of the state", specifically pointing out the provisions regarding dual citizenship.

Stanislovas Buškevičius, MP from the nationalist party, expressed satisfaction with the inclusion of his proposal to not shorten the naturalization residence requirement from 10 to 5 years and to set it at 5 years instead of 3 for marriage migrants (the 3 year requirement was restricted to the spouses of deportees who got married in exile). On the

[16] Records of the proceedings and deliberations in the Parliament of the Republic of Lithuania can be found through a search function on the Parliament's website at http://www3.lrs.lt/pls/inter3/dokpaieska.forma_l.

other hand, he expressed dismay that his colleagues dismissed his proposal to add a requirement to know the basic facts about Lithuanian history to the requirements of Lithuanian language and the basic Constitution facts for naturalization, claiming that knowing history and thus understanding the country is crucial for integration, and supporting his argument by giving the example of both Germany and Austria speaking German language, or Spain and Mexico speaking Spanish language, but having different history. Justinas Karosas, MP from the social democratic party, opposed this suggestion by claiming that we should teach Lithuanians themselves some of our history before requiring it of others. Even though his position is not overtly nationalist, the language follows the ways in which a boundary is drawn between ethnic Lithuanians and others. However, Karosas explicitly proclaims support for the spirit of the proposed law which is "a liberalizing spirit of an open society" and claims that "the notion of a closed state upheld by the priestesses of Lithuanian virginity is incompatible with our integration into the European Union and the general tendencies of contemporary democratic society and contemporary democratic states".

Representatives of the first successful populist party in Lithuania, the social liberals, were split in their opinion regarding the new law. Algimantas Valentinas Indriūnas emphasized that "we have a lot of diaspora who is until today complaining a lot that they cannot be Lithuanian citizens while they are citizens of other countries <…> the removal of the barrier that existed until now will clearly have a positive effect and they will be able to help their ethnic homeland more than before". On the other hand, Egidijus Klumbys expressed dismay at the devaluation of values and claimed that, once this law is adopted, citizenship will lose its worth. He pointed out that many Lithuanians who escaped to the

West after the Second World War did not take the citizenship of any other state and were still able to settle in some country, have great careers etc., which in his opinion proves that having Lithuanian citizenship is not an obstacle to having one's life together in some country, and named the "totally liberal provisions" a reason to vote against this law. There was only one vote against and one abstention, indicating an overwhelming consensus regarding the changes in the treatment of dual citizenship. The language used by the supporters of the law shows both the traditional diaspora-oriented motives of an emigrant-sending state and the alignment with the worldwide liberalization tendencies.

Most of the provisions of the law remained the same, still proclaiming that gaining citizenship of another state implies losing Lithuanian citizenship. However, this time an explicit exception was made for people of ethnic Lithuanian descent, and to those who had been citizens of the interwar Lithuanian Republic and their descendants, as long as they had not expatriated to their ethnic homelands. Thus, even if the members of Parliament lauded the liberalizing tendencies of this law, it still retained its ethnonationalist proclivities and contained safeguards against members of nations which have historically been or currently are at odds with Lithuania – primarily Russians, Poles, Germans and Jews.

In the previous chapter, we noted that the scientific discourse on dual citizenship has argued for the declining relevance of the potential threat of clashing loyalties due to the increasing interdependence of a globalizing world, especially in cases of regional integration such as the EU. However, the Lithuanian case may serve as a reminder that it would be myopic to underestimate the long-term influence of historical interstate conflict and of the colonial experiences of foreign domination on citizenship policies. In that sense, the Lithuanian case harkens back to Brubaker's (1992a) argument and provides support for

his claim of the lasting relevance of the historical constellations shaping the national identity and citizenship nexus. The historical threat of neighboring countries who have repeatedly laid claims to Lithuania by the means of forced occupation is a universally accepted part of the Lithuanian public discourse and translates into an undercurrent of distrust of the members of corresponding ethnicities (discussed in section 2.2.2), from the 1920s Constitutional argumentation (mentioned in section 2.3.1) to the 2003 law on citizenship.

The 2002 Law on Citizenship that had further liberalized access to dual citizenship for ethnic Lithuanians was criticized from the outset both by national minorities[17] and by the judiciary[18]. However, the law was not widely perceived as problematic until the impeachment of a populist president Rolandas Paksas who, among other things, was accused for granting Lithuanian citizenship to a Russian sponsor as a reward for his support (Clark and Verseckaite 2005). The political establishment set out to impeach the president who was widely perceived as incompetent and susceptible to Russian influences, and his granting of Lithuanian citizenship to a Russian businessman with ties with Russian secret police was construed as evidence of breaking the presidential oath of upholding the Constitution and the laws of the Republic of Lithuania, and serving the interests of Lithuanian state and nation rather than his one's own personal interests.[19] The regulation

[17] Leader of Poles in Lithuania Election Action, then a member of the Lithuanian Parliament (now a member of the European Parliament) Waldemar Tomaszewski, interview in Renik (2003).
[18] Then Chairman of the Constitutional Court Egidijus Kūris, referring to the ruling of December 30, 2003, interview in Maksimaitytė (2007).
[19] Constitutional Court of the Republic of Lithuania. 2003. Ruling "On the Compliance of President of the Republic of Lithuania Decree No. 40 "On Granting Citizenship of the Republic Lithuania by Way of Exception" of 11 April 2003 to the Extent that it Provides that Citizenship of the Republic Lithuania Is Granted to Jurij Borisov by Way of Exception with the Constitution of the Republic of Lithuania and Paragraph 1 of Article 16 of the Republic of Lithuania Law on Citizenship." Case No. 40/03. Vilnius, 30 December 2003.

of granting the citizenship of Lithuania by way of exception, which is what Paksas used for his supporter, has been repeatedly questioned in the public discourse, especially when it is granted to prospective athletes in the wake of international competitions. However, what brought the 2003 law to its demise was the regulation of dual citizenship. The next chapter provides an in-depth examination of the case that disrupted the development of citizenship regulation which until then had appeared to follow the path prescribed by the conventional theories on the behaviour of an ethnonationalist emigrant state.

The data discussed in this chapter have established that Lithuania is an ethnonationalist emigrant-sending state with postcolonial sensibilities produced by the experiences of foreign domination. Throughout the development of Lithuanian citizenship regulation, the distinction between Lithuanians for whom access to Lithuanian citizenship was supposed to be unproblematic, and other ethnics who could not be trusted enough to be allowed to have dual citizenship, has continued to hold its place in the popular mentality. Such a configuration eventually faced its downfall when confronted head on with the imbrications of ethnicity and restitution. The next chapter focuses on the critical juncture in Lithuanian citizenship regulation – the 2006 case of dual citizenship – and the reactions to that ruling in the public discourse in order to expose the role of identitarian vs. instrumental dimensions in the conception of citizenship. In the fourth chapter of this thesis I analyze the legal documents and the surrounding official discourse produced by the decision-makers in this case in order to test the alternative explanations that could be offered for the counterintuitive political outcome. In tandem, these three chapters provide an exposition of the influences and the reasoning behind, and the implications of,

citizenship politics of a nation-state caught between the contradictory forces of postcolonialism and globalization.

## Chapter 3. The critical juncture in Lithuanian citizenship regulation

In the previous chapter, we established that the development of Lithuanian citizenship regulation until early 2000s would seem to be a fairly straightforward case of ethnic citizenship policy traditionally associated with Central and Eastern European countries, epitomized by the repatriation clause which targeted members of nation-states historically at odds with Lithuania. Yet this citizenship regime was brought down in a critical juncture of a 2006 Constitutional Court case which declared not only the preference given to Lithuanians discriminatory, but also the widespread practice of dual citizenship unConstitutional, cutting off the availability of dual citizenship for ethnic Lithuanians instead of expanding it to people of other ethnicities.

This outcome upset both the plaintiffs of the case, the Lithuanian public and politicians, and the mainstream theories on dual citizenship. As evidenced by the migration data discussed in the previous chapter, at that time Lithuania was the country of largest net emigration in the EU, and scholars would assume that, as a sending country, it should favor dual citizenship as a means of maintaining ties with its expatriates, rather than forbid it. Furthermore, even the scholars who are cautious not to overemphasize the trend towards greater inclusion tend to associate liberalization with elites and restrictiveness with popular opinion (Howard 2009), whereas the Lithuanian public wanted permissiveness, but the judges decreed restrictiveness. In this chapter I discuss the discursive positions of the elites and the public related to the 2006 Constitutional Court ruling in order to highlight to what extent the ruling requires explanation (which is offered in Chapter 4). I begin by explaining the main features of the Constitutional Court case that was briefly introduced in the beginning of the thesis (a more detailed analysis follows in Chapter 4, where each

citizenship-related ruling is analyzed more extensively). Then I proceed to discuss the public discourse, demonstrating the relative prominence of identitarian vs. instrumental dimensions of the conception of dual citizenship. I distinguish the positions presented by local Lithuanians and by members of the diaspora. The next part of this chapter focuses on the reactions of politicians to this ruling and their heretofore unsuccessful efforts to find a legal solution which would allow Lithuania to circumvent the hegemonic norm of nondiscrimination and restore the ethnonationalist dual citizenship regime.

The main source of data for the discussion in this chapter is articles in the Lithuanian media and public comments on those articles in internet depositories. Although it may seem that the internet is an insufficient source of data due to the limits of its audience, its use in the Lithuanian case is justified due to the fact that two thirds of the Lithuanian population are regular internet users, and the main activity they engage in is precisely internet newspaper reading (European Commission 2013). I have conducted sustained monitoring of the appearances of the topic of dual citizenship in the public discourse from the year 2006 until 2015 in several internet portals, first and foremost the leading internet news portal Delfi.lt, which is read by virtually all Lithuanian internet users (e.g. 62.17% of the Lithuanian population in July 2014).[20] Overall, I have read over two thousand articles, many of them accompanied by hundreds of comments by internet users, but only those articles that were directly used in writing the text are included in the bibliography. The records of the discourse in the mass media are supplemented by the records of parliamentary debates on proposals regarding laws on citizenship, as well as public statements and resolutions produced by various governmental agencies,

[20] Data shared by a representative of Delfi.lt, Andrius Bagdonavičius, personal communication, September 15, 2014.

nongovernmental organizations, diaspora representatives, politicians and other public figures. I approach the discourse as a Claim-Response pattern (Hoey 2001), which highlights the contentious and dynamic nature of the dual citizenship debates and helps distill the most prominent claims and responses made by various actors, enabling us to evaluate the relative hegemony of either rights or identity in the discourse on citizenship. In a very schematic manner, we can identify a chain of claims-responses and treat the November 2006 ruling as a claim, the immediate public outcry as a response, its elaborations as claims, political proposals as a response to these claims and the claims of the Constitutional Court, treating legislative proposals as claims in their own right that trigger responses from the public and the Constitutional Court, etc. It is possible to identify several spikes in the intensity of the dual citizenship debates related to key events after the November 2006 ruling, such as the attempts to formulate and pass new versions of the Law on Citizenship, or the debates sparked by the issues of granting citizenship by way of exception to athletes expected to represent Lithuania in the Olympics. However, instead of following the spiral development of citizenship debates chronologically and alternating between the public discourse and political proposals, I present the data on the public discourse in one section, since the arguments there are repeated during every spike in activity and do not substantially change, and confine the legislative proposals to another section with more attention to their temporal development.

### *3.1. The 2006 Constitutional Court case.*

In September of 2003 a group of MPs, mostly representatives of Polish and Russian ethnic minorities and liberal parties, addressed the Constitutional Court of the Republic of Lithuania with a question whether the newly adopted Law on Citizenship was

unConstitutional in that it discriminated based on ethnicity and descent. This petition was combined with a 2004 inquiry from the Vilnius district administrative court. The latter inquiry was based on a case concerning Ida Ita Rogovina, an Israeli citizen who had repatriated to Palestine in 1940. She wanted to regain her Lithuanian citizenship, which she possessed before World War II, in order to achieve restitution of her property. The administration that issues citizenship documents had refused to restore her prewar Lithuanian citizenship on the basis of the law which allowed ethnic Lithuanians to retain Lithuanian citizenship if they emigrated, but forbade preservation of Lithuanian citizenship for people of other ethnicities who repatriated to their ethnic homelands. The Israeli citizen brought the case to a district court and claimed that any attempt to establish whether the person who had Lithuanian citizenship before World War II has repatriated to an ethnic homeland or not requires inquiries into a person's ethnicity and thus is an instance of discrimination prohibited by the Article 29 of the Constitution of Lithuania (quoted in Petrulienė 2006). The local court tentatively agreed with this assessment of the noncompliance of the Law on Citizenship with the Constitution and forwarded the question to the Constitutional Court in 2004.[21] After the standard process of preparation of the cases, the public hearing took place on October 11, 2006, and the ruling was announced a month later, on November 13. The protocol of the public hearing (analyzed in more detail in the next chapter) shows the judges' frustration with the lack of definition and consistent application of the concept of repatriation, branching off into criticizing other aspects of the 2002 Law on Citizenship.

[21] Interview with the legal representative of the Israeli citizen in her case and in numerous other cases of Jewish property restitution, lawyer Faina Kukliansky, September 16th, 2009.

In the end, the Constitutional Court ruled that indeed the repatriation clause is discriminatory, thus for the first time affirming the applicability of Article 29, which prohibits discrimination or privileging, to the area of citizenship legislation (see Chapter 4 for a more in-depth analysis of the development of the Lithuanian Constitutional doctrine on citizenship). However, instead of expanding the availability of dual citizenship to include people of other ethnicities, it declared the widespread availability of dual citizenship "unjustifiable under the Constitution" due to the Article 12 of the Constitution which states that "with the exception of individual cases provided for by law, no one may be a citizen of both the Republic of Lithuania and another state at the same time". The formulation of this article was interpreted by equating the phrase "individual cases provided for by law" with "exceptionally rare". With this formulation, the Court provided a strong condemnation of the consecutive Laws on Citizenship which had gradually expanded availability of dual citizenship to become widespread rather than rare, saying that such regulation "not only does not prevent but even encourages such tendency". The seed for this decision was already contained in the petition filed by the group of MPs, who complained that using ethnicity as a criterion for dual citizenship leads to the eligibility of 80% of the population and thus contradicts Article 12. In providing this argument, the goal of the petitioners was to remove the ethnicity clause, not to decrease overall availability of dual citizenship[22], but the Court took this opening and interpreted it in the most restrictive way possible:

> It is to be emphasized that if the legislator really follows the provision that it is not necessary to restrict double citizenship, he should first of all start the revision of the corresponding provisions of

[22] Interview with the former member of Parliament who served as the representative of the group of MPs addressing the Constitutional Court in regards to ethnic discrimination in the provisions of the Law on Citizenship, Aleksander Poplavski, September 19th, 2009.

> the Constitution, inter alia of Article 12, and to do that by following the procedure which is established in the Constitution itself. In this context it is to be noted that Article 12 of the Constitution which establishes the basis for the legal regulation of citizenship relations of the Republic of Lithuania is in Chapter I titled "The State of Lithuania" of the Constitution—an integral act—for the provisions of which a particularly big Constitutional protection has been established: under Paragraph 2 of Article 148 of the Constitution, the provisions of Chapter I of the Constitution may be altered only by referendum.
>
> No matter in what way the legal regulation of citizenship relations of the Republic of Lithuania might be corrected in the future, the provisions of the Constitution must be heeded, inter alia those which entrench the equality of all persons and non-discrimination on the grounds of ethnical origin.[23]

In addition to addressing the direct inquiries of the petitioners, the Constitutional Court offered a critique of the whole 2002 Law on Citizenship, taking an activist stand (similarly to its far-reaching 2003 ruling which resulted in an impeachment of the President for abusing the power to grant citizenship by way of exception, discussed in more detail in the next chapter). The conclusion of the ruling, one of the longest of its kind, contained 23 points on how the items in the 2002 Law on Citizenship that were in some way affected by the repatriation clause and the availability of dual citizenship for ethnic Lithuanians were in conflict with the Constitution. 12 of those points of the conclusion denounced specific items as being in conflict with Article 29, 9 indicated items in conflict with Article 12, and the very definition of repatriation as "departure for one's ethnical homeland and settlement there", which had been in the Law on Citizenship since 1991, was found to conflict with both: in form with Article 12 and in content with Article 29.[24]

[23] Constitutional Court of the Republic of Lithuania. 2006. Ruling "On the Compliance of the Provisions of Legal Acts Regulating the Citizenship Relations with the Constitution of the Republic of Lithuania." Case No. 45/03-36/04. Vilnius, 13 November 2006.

[24] Constitutional Court of the Republic of Lithuania. 2006. Ruling "On the Compliance of the Provisions of Legal Acts Regulating the Citizenship Relations with the Constitution of the Republic of Lithuania." Case No. 45/03-36/04. Vilnius, 13 November 2006.

In addition to the denouncement of the gradual expansion of availability of dual citizenship, the Court criticized the provisions regulating the President's ability to confer Lithuanian citizenship as being too vague and contributing to unwarranted expansion of dual citizenship. Altogether, the legal regulations concerning citizenship were termed contradictory and in need of essential revamping:

> <..> this legal regulation is very controversial, inconsistent and confusing. This law includes a number of provisions which are hardly compatible with each other. Some formulas are ambiguous. This law is to be corrected in essence.[25]

Such a ruling may have been anticipated considering that the seeds had been planted with the activist approach evident in the 2003 ruling on the abuse of presidential powers of granting citizenship by way of exception[26] (discussed in more detail in Chapter 4). Furthermore, the 2002 Law on Citizenship was criticized from the outset, both by national minorities, for example, the leader of the Polish ethnic party Waldemar Tomaszevski (interview in Renik (2003)), and by the judiciary, for example, the Chairman of the Constitutional Court himself, Egidijus Kūris (as he reflects in an interview in Maksimaitytė (2007)). However, the November 2006 ruling was greeted with explosive disbelief in the public discourse. Despite the fact that the Court had previously affirmed the differential treatment of the descendants of interwar Lithuanian citizens without expressing any negative reaction to the repatriation clause (see Chapter 4 for more in-depth analysis of the rulings over time), now it effectively instituted a new explicit Constitutional doctrine aimed

[25] Constitutional Court of the Republic of Lithuania. 2006. Ruling "On the Compliance of the Provisions of Legal Acts Regulating the Citizenship Relations with the Constitution of the Republic of Lithuania." Case No. 45/03-36/04. Vilnius, 13 November 2006.

[26] Constitutional Court of the Republic of Lithuania. 2003. Ruling "On the Compliance of President of the Republic of Lithuania Decree No. 40 "On Granting Citizenship of the Republic Lithuania by Way of Exception" of 11 April 2003 to the Extent that it Provides that Citizenship of the Republic Lithuania Is Granted to Jurij Borisov by Way of Exception with the Constitution of the Republic of Lithuania and Paragraph 1 of Article 16 of the Republic of Lithuania Law on Citizenship." Case No. 40/03. Vilnius, 30 December 2003.

against ethnic discrimination[27] – in other words, against a privileged position of Lithuanians in Lithuania. Now, it took away the possibility to have dual citizenship from everyone, disregarding their ethnicity. The controversy sparked by this ruling exposed the underlying nationalist assumptions related to the issues of citizenship, statehood and national security, and led the public to grapple with these notions and the politicians to search for ways to ensure legal linkages between Lithuania and its emigrants. The hegemony of the international norm of nondiscrimination was harder to challenge directly than the insistence of the Constitutional Court on the imperative of lessening the ranks of dual citizens, which was taken as a personal affront by virtually everyone affected by emigration, but the two sides of the problem inevitably intermeshed in the discussions. In the next section, I try to systematize the responses to the claims put forth by the Constitutional Court, which in themselves should be seen as responses to the claims made by national minorities.

### *3.2. Public discourse on Lithuanian dual citizenship.*

The main actors who made claims and responses in the public discourse on Lithuanian citizenship can be grouped into two main categories: those who are emigrants and those who are not. These two groups can further be conceptually broken down into public figures, whose pronouncements are published and debated in the mass media, and the general public represented by the curious category of "internet commentators" who post anonymous comments underneath the articles in online news portals. Such anonymous commentators are not statistically representative in any sense, including the tendency that

[27] Chairman of the Constitutional Court Egidijus Kūris, interview in Kweder (2007).

usually only those who hold the most extreme positions tend to seek to be heard. Still, the volume, tone and intensity of such commentary can be used as a crude proxy of the resonance of the public discourse among the population. My monitoring of Lithuanian media included the internet comments, and although they are not accessible once archived and thus cannot be analyzed *in corpore* or in any systematic way, the continuous reading of the comments underneath articles from 2006 until 2015 has informed my evaluation of the public's position.

*3.2.1. Reactions to the November 2006 ruling in the public discourse.*

After the media reported on the conclusion of the November 2006 ruling, the responses came swiftly and have continued until today. The intensity of activity in the public discourse has crested in several spikes related to legislative proposals or well-publicized cases where the restrictiveness of the ruling had caused problems to specific individuals. However, the arguments used in the discourse on dual citizenship have not been changing through time since the initial debates, but rather tend to be stuck in a feedback loop, therefore, it is possible to talk about the key elements of the schematic structure of the discourse by referencing utterances at any point in time during the period under scrutiny.

It is ironic that the December 2003 and November 2006 rulings on the issues of citizenship have had the most effect on the image and legitimacy of the Court and of the Constitution itself. For many years, the Constitutional Court had been either virtually invisible to the public or considered to be virtually unassailable, and its pronouncements were accepted at face value (Jankuvienė 2006). However, this ruling caused a large public outcry that the Court was continuously overstepping its mandate and going against the will

of the people, first by precipitating the impeachment of the popularly elected President and then by cutting off the possibility to maintain Lithuanian citizenship for thousands of emigrants through the reinforcement of the Constitutional dual citizenship prohibition (Laiko ženklai 2008; Šmulkštys 2007). The Constitutional Court has been a target of multiple accusations: for engaging in linguistic sophistry, for overstepping its boundaries in the system of checks and balances and interfering with the workings of the legislative branch, for putting the Constitution above the will of the people, and for disowning the Lithuanian nation.

Between the two main charges leveled by the Constitutional Court, that access to dual citizenship had been discriminatory and that it was not rare enough, the main reaction was aimed at the latter, calling the Court "arrogant" for proclaiming that there were "too many" instances of dual citizenship (Udrys 2006). The need to retain ties to 1/5 or more of the population that is currently abroad – and thus potentially aspiring to dual citizenship – was overwhelmingly acknowledged by all sides of the debate, but the debate teemed with tensions between and within different interest groups. It was further complicated by the impossibility to reconcile the imperative of nondiscrimination with the desire to affirm the special relationship between the state of Lithuania and ethnic Lithuanian migrants. In fact, this impossibility is what forms the feedback loop in which the discourse on dual citizenship has gotten stuck: the desire to maintain ties with large numbers of emigrants stands in opposition to the ruling that there should be only rare, exceptional instances of dual citizenship, and the desire to designate the exceptions on ethnic terms not only is in opposition to the discrimination charge, but also exacerbates the requirement of rarity due to the fact that the majority of Lithuanian citizens are ethnic Lithuanians. Thus, the

aspirations to diaspora citizenship violate both parts of the November 2006 ruling, and yet they are not removing their challenge, as the majority of the population uphold the right of ethnic Lithuanians to dual citizenship (55-88 percent according to various polls, depending on the formulation of the question[28]).

Neither the inquiring parliamentarians nor the Israeli citizen whose case precipitated the ruling were happy with the ruling, for they had initiated the inquiry with the hopes of expansion of dual citizenship to include other ethnicities beyond Lithuanians.[29] Their hopes would seem well founded, given the combination of the mainstream understanding of dual citizenship possibilities as an ever expanding trend, and the delegitimation of ethnic discrimination as the hegemonic norm. Therefore, it is not surprising that the public backlash against the ruling that blindsided the interested parties and defied the predictions of mainstream hypotheses pertaining to emigration countries leaves an impression of almost overwhelming disapproval of the Constitional Court in the public discourse. In the end the initiator of this case faces a requirement to renounce Israeli citizenship if she wants to regain her Lithuanian citizenship, which she is not prepared to do, given her domicile in Israel and advanced age.[30] The fact that a similar requirement now applies to several hundred thousand of Lithuanian emigrants and their families is a source of indignation and disbelief among a majority of the Lithuanian public. Although

[28] Results of various representative surveys conducted by public opinion research organizations and reported in the media. "Almost 60%" was reported in BNS (2007). 88.1% support was reported in Lrytas.lt (2007). 60.7% support reported in DELFI.lt. (2007). 72.3% support was reported in DELFI.lt, „Spinter tyrimai" (2009). 55% support was reported in BNS (2013). Due to the differences in the exact formulation of survey questions it is not possible to draw systematic comparisons, but the general tendency of the support of the majority of the population for dual citizenship for ethnic Lithuanians is indisputable.

[29] Interview with the former member of Parliament, representative of the group of MPs who addressed the Constitutional Court concerning ethnic discrimination in the provisions of the Law on Citizenship, Aleksander Poplavski, September 19th, 2009.

[30] Interview with the legal representative of the Israeli citizen in her case and in numerous other cases of property restitution, lawyer Faina Kukliansky, September 16th, 2009.

the case which prompted the Constitutional Court to declare regulation of dual citizenship unConstitutional concerned pre-war citizenship, the question of dual citizenship gained the aura of political immediacy in relation to the new migration.

Despite legal complications and warnings that unlimited possibilities for dual citizenship would pertain equally to emigrants and immigrants (see Aleknonis 2007), the general focus of the public debate revolves around the question of the right to dual citizenship for Lithuanian émigrés vs. ethnic minorities. Still, we should note that the future relevance of the question of dual citizenship for immigrants is acknowledged by some public figures, like Vygaudas Ušackas, a diplomat and public figure, the Lithuanian ambassador to the UK at that time (Utyra 2007).

When the debate turns to foreigners who could gain Lithuanian citizenship through the means of Presidential decree, such as the provision allowing to bestow Lithuanian citizenship on famous artists, scientists, sportsmen, etc., with the understanding that they will promote Lithuania, the hostility comes through even in parliamentarian debates, as evidenced by the exchange between a radical MP Egidijus Klumbys, who insisted he does not want "negroes" playing on Lithuanian national team, and the Speaker of the Parliament Irena Degutienė who reprimanded him for racist speech but did not pursue it further.[31] Although other countries' choices in limitations of dual citizenship are acknowledged as attempts at limiting immigration, the case of Lithuania is usually not interpreted as an example of such attempts (see Kubilius 2007b). On the contrary, dual citizenship for immigrants is termed a nonexistent issue on Lithuanian political agenda.[32]

[31] "Pilietybė – ir už būsimus nuopelnus", 2010-11-05 http://www.veidas.lt/pilietybe-%E2%80%93-ir-uz-busimus-nuopelnus.

[32] Mickevičius, Henrikas. "Dvigubos pilietybės klausimas spręstinas keičiant Pilietybės įstatymą." Theses of a speech delivered at a joint meeting of the Parliamentary and USA Lithuanian Commission,

Such is the surface of the official discourse, but if one looks at the *vox populi*, epitomized by internet commentary, the fear of potential cheap labor immigration from the East creeps up next to the more historically informed suspicions of aggressive neighbors. An archetypal commentator who called himself "Algirdas who took Moscow" (after a 14th century Lithuanian Grand Duke) said that "Dual citizenship is not needed, because it will be a way for foreigners to get a right to come here in droves and thus create colonies in Lithuania".[33]

The connection between such fears and the decision of the Constitutional Court to restrict the possibility to have dual citizenship to everyone without ethnic differentiation rather than to allow dual citizenship despite ethnic descent is made explicit in several public debates.[34] The historical context of neighborly dangers is constantly evoked in the November 2006 ruling. Overall, it appears that the Constitutional Court operates on a more historically and geopolitically informed platform, whereas its critics, the proponents of dual citizenship, focus on current émigrés, sidestepping even the sensitive issue of property restitution for repatriates, which was the original apple of discord responsible for the deathblow to the possibilities of dual citizenship (emphasized in Šindeikis 2007). The question of property restitutions gets picked up by smaller parties and populists and

Parliamentary Committee on Human Rights, and Foreign Affairs Ministry, on April 19, 2007. // http://www.hrmi.lt/news.php?strid=2000&id=4553. Cf. Pivoras 2007 for an acknowledgement of immigration potential in the long-term perspective.

[33] http://www.alfa.lt/straipsnio-komentarai/159396/.

[34] An example of explicit reference to the ruling of November 2006 as a closing of Pandora's box full of Russian collaborators is in Valatka (2007). The commentaries on this article on the webpage abound with endorsements of the block on dual citizenship in order to prevent widespread problems related to property restitution on the one hand and with refusals to give up citizenship for hundreds of thousands of ethnic Lithuanians just to prevent the threat of Russian double agents on the other hand.

repeatedly lamented in internet commentaries, although many an opponent of dual citizenship does not forgo playing the restitution card.[35]

Some opponents see emigrants' wish for dual citizenship as a purely instrumental matter, leading to double rights and no duties (see Valatka 2007). It is condemned as a mere quest for a more comfortable life and more convenient travel. Characteristically, opposition to dual citizenship for emigrants is more often framed in collectivistic terms of the everyday socioeconomic duties to one's country rather than in terms of the egalitarian principle of 'one person, one vote,' or in terms of conflicting major duties, such as war, which most Lithuanians deem unlikely in the face of Euro-Atlantic integration. The claim that Lithuania is created and sustained by people who reside here (hence emigrants cannot be considered full-fledged participants in the Lithuanian community) is made by numerous commentators and by politicians on either side of the political spectrum.[36]

Among the critics of dual citizenship there is pronounced resentment of unfair advantage: they already are better off than us, why should they also get the advantage of dual citizenship (Stasys 2007)? Emigrant remittances are barely tangential to this discourse, although in the context of the post-2008 economic downturn they have been increasingly acknowledged in the media.[37] Critics of dual citizenship raise material questions pertaining to taxation, welfare, pensions, healthcare, etc., but the harmonization of social regulations of common European space has been cited to dispel most of such doubts. The EU integration is invoked by proponents of dual citizenship to downplay the

[35] For example, a member of the European Parliament Aloyzas Sakalas (2007).
[36] Cf. MEP Aloyzas Sakalas, quoted in Sotvarienė (2007), and MEP Vytautas Landsbergis, quoted in Valatka (2007).
[37]The emigrants' remittances have been estimated to equal a quarter of earned income of the populace in 2010 (Gabartas 2011) and half of the retirement pensions paid out in 2011 (ELTA 2012).

possible socioeconomic problems which could result from dual citizenship; at the same time, it is invoked by opponents of dual citizenship as a satisfactory way of living with just one citizenship, as long as it is citizenship of an EU member state (cited in Makaraitytė 2007) (many discussions referred to the newborn Lithuanians trapped by the *ius soli* policy of Ireland).[38] The question of voting rights is also an object in this tug of war, with skeptics, on the one hand, claiming that emigrants living abroad are incompetent to decide on Lithuanian politics, and proponents, on the other hand, expressing hopes of positive contamination with a more developed civic culture. Overall, the opponents of dual citizenship rely either on the argument of the unfair advantage or of questionable loyalty to the state, while the supporters focus on the predicament of the diaspora. It is in fact diaspora that usually reinforces the spike in the perpetual dual citizenship debates by reacting to any legislative proposals with the reiteration of the same key arguments. Let us summarize the main contributions of the emigrants to the discourse on dual citizenship.

### *3.2.2. Dual citizenship from the perspective of the emigrants.*

The most prominent and stable participants in the public discourse on dual citizenship are the representatives of diaspora. Although the arguments directed against dual citizenship are multifaceted and appear reasonably grounded, they are drowned in the sea of identitarian claims, spearheaded by emigrants themselves. The media is awash by pronouncements by diaspora members who hold that citizenship is a way to keep in touch with the homeland, to ensure preservation of Lithuanianness. Pronouncements from public figures like the representatives of the World Lithuanian Community, the main organization

[38] The next chapter addresses the role of the EU in the Lithuanian citizenship discourse in more detail.

of Lithuanian diaspora, are supplemented once again by the internet commentary, and both sides emphasize the identitarian dimension of their quest for Lithuanian citizenship.

In their demands for dual citizenship, the World Lithuanian Community representatives appeal to the September 2, 1996, statement by the Parliament of Lithuania which confirms that the Lithuanians in Lithuania and abroad form an integral Lithuanian nation, joined together by the highest organizational form of national community – an independent state. They insist that Lithuanians abroad have a right to democratically decide on political matters that affect them, and that without Constitutional political rights a person is deprived of the possibility to affect the future of the nation, loses hope and the sense of solidarity with his or her compatriots, and eventually distances himself or herself from the homeland.[39]

At the same time, emigrants emphasize the heightening of their feelings of ethnonationalist patriotism produced by the experience of foreignness (cf. Honig 2001) and present it as an asset in their commitment to Lithuania. Emigrants appeal to the unity of the nation, dramatically comparing loss of Lithuanian citizenship to a mother abandoning her children, and complaining that the ruling of the Constitutional Court against privileging Lithuanians in Lithuania effectively gives priority to invaders over historic inhabitants (cited in Jackevičius 2007). Anonymous emigrants commenting on articles point out that they are not after social rights, which are better provided in their countries of residence anyways, only after the recognition of their belonging. Even the then President of Lithuania Valdas Adamkus expressed an opinion that the question of dual citizenship has been overly bureaucratized (formalized) and should instead be more focused on maintaining the links

[39] June 27, 2007, a statement by the Lithuanian World Community concerning the long-term strategy of the state relations with Lithuanians residing abroad 2008-2020 (http://www.plbe.org).

of ethnic Lithuanian emigrants to their homeland.[40] This pattern of discourse lends support to my argument that the identitarian aspect of citizenship is more pronounced when a person's rights can be guaranteed in some other way.

The discourse on dual citizenship in Lithuania allows us to broaden the narrow assumption that dual nationality is a pragmatic strategy. The discussions on pros and cons of dual citizenship have touched upon all components of the notion of citizenship – rights and duties, membership and participation – but the central place is occupied by the identitarian aspect of the question of who belongs to the Lithuanian political community. The debates on dual citizenship predominantly revolve around the axis of an ethnically defined Lithuanian political community, thus conforming to the mainstream prediction of citizenship studies pertaining to emigration countries. However, the actual political outcome of the critical juncture in Lithuanian citizenship regulation contradicts the mainstream theories, and even the ones that have been formulated as attempts to refine those theories, like Howard's (2009) suggestions that elites tend to liberalize access to dual citizenship, or Joppke's (1998) argument that liberalization takes place at the hand of the judges, despite restrictive public opinion. If an overwhelming majority of both politicians and population agrees that emigrants of Lithuanian origin should not lose their Lithuanian citizenship, even if they become dual citizens, why is there no easy solution to the juridical casuistry that is standing in the way? As we have seen, Lithuanian citizenship discourse is inextricably caught between the current migration flows, the shadows of historical predicament, and the EU-defined normative and institutional imperatives of non-

[40] A statement in the April 2007 meeting of the joint committee of Seimas and the Lithuanian World Community, quoted in www.alfa.lt.

discrimination. In the next section, I review the ways in which politicians have been attempting to deal with these challenges.

### *3.3. Legislative proposals.*

Having established the overwhelmingly identity-related preferences of the public, I turn to an overview of the reaction of politicians who have been searching for ways to satisfy both the preferences of their constituents and the constraints imposed by the Constitutional Court. Most of them went along one of two tracks: either seeking to reformulate the provisions of the Law on Citizenship in a way that would make it possible to restore the ethnonationalist dual citizenship attribution regime without triggering a reaction from the Constitutional Court, or accepting the Court's dictum that the situation can only be addressed by changing the Constitution. Let us overview the legislative proposals that have been laid out since 2006 and identify the main bones of contention in the politico-legal discourse on dual citizenship.

#### *3.3.1. Debates on potential constitutional amendments.*

The 1992 Constitution has been very stable and has hardly been amended, but the November 2006 ruling has caused an unprecedented flurry of proposals for constitutional amendments (INFOLEX 2009). The proposals to deal with the dual citizenship issue by changing the Constitution diverge depending on which article of the Constitution they target. Some articles can be changed by the Parliament, yet others require a referendum.

*3.3.1.1. Referendum as a solution and a problem.* The corpus of the Constitutional Court that passed the 2006 ruling has assumed an activist position on the issue of dual citizenship and has repeatedly asserted that any attempt to institute widespread possibilities for dual citizenship would contradict the Article 12 of the Constitution which institutes the

imperative of the rarity and exceptionality of dual citizenship and thus would have to be struck down.[41] This article of the Constitution can only be amended via a referendum. Therefore, some politicians, first and foremost left-wing populists, have repeatedly suggested holding a referendum (Lrytas.lt 2013; Naujosios sąjungos (socialliberalų) frakcija 2007; Paulauskas 2014). Their idea was to pose the question to the voters whether citizens of the Republic of Lithuania should also be allowed to be citizens of another country together with regular elections, either of the Parliament or of the local government.

The initial suggestion of a referendum was put forth by MP Artūras Paulauskas, one of the first populist politicians in Lithuania, on September 18, 2007. He suggested rewriting Article 12 by eliminating any reference to restrictiveness or individual cases determined by law and to wanted it to say that "A citizen of the Republic of Lithuania may also be a citizen of another state".[42]

Although no one expressed outright support for that particular blanket formulation, the response to this proposal right away established several political positions regarding the referendum. Some MPs supported the general idea and only suggested reformulating the question, while others lamented that it would make dual citizenship into a rule rather than an exception. The supporters, like a liberal MP Petras Auštrevičius, emphasized the importance of coming to a decision for "not only Lithuanian citizens living in this state, but also Lithuanian citizens living in other states, and to potential Lithuanian citizens" and called for all parties to deliberate on the best formulation of the referendum question.[43]

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[41] Constitutional Court of the Republic of Lithuania. 2006. Ruling "On the Compliance of the Provisions of Legal Acts Regulating the Citizenship Relations with the Constitution of the Republic of Lithuania." Case No. 45/03-36/04. Vilnius, 13 November 2006.

[42] Project presented to the Parliament on September 18, 2007, see the text at http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=304070.

[43]Parliamentary proceedings, September 18, 2007, http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=304466

The opposition to the proposal boils down to a dual argument. The first part is whether it is possible to find such a formulation which would ensure that dual citizenship explicitly applied to ethnic Lithuanians but would bypass the Constitutional Court's take on the norm of nondiscrimination. The second part is the emphasis on the potential dangers of dual citizens from the historically hostile nations, first and foremost Russia, advocating a search for other solutions than the suggested referendum with a blanket formulation. The then leader of this party and of the right-wing opposition, two-time Lithuanian Prime minister Andrius Kubilius, said that this suggested referendum "reflects a Lithuanian proverb that the road to hell is paved with good intentions" and worded his opposition very strongly:

> I want to once again emphasize the very clear words said by the Constitutional Court: "A referendum should be held only if the legislator wants to give Lithuanian citizens completely unrestricted right to dual citizenship." That would be a mistake. A mistake which is also seen in the initiative submitted by A.Paulauskas, because that is precisely how the new version of the second part of Article 12 proposed by him is formulated. The result will be that we will have up to 200 thousand Russian citizens in Lithuania, and Kremlin will rejoice in this gift. <…> I suggest to not play with referendum initiatives, to not play with the future of the Lithuanian nation and the right of Lithuanian citizens to dual citizenship. I suggest to not approve of this really completely green initiative.[44]

The suggested formulation which does not put any qualifying restrictions on the eligibility for dual citizenship has drawn criticism for being easily demonized by anti-immigration populists, which is a suggestion fascinating in itself, since the question of immigration had heretofore appeared to be marginal in Lithuanian discourse. However, the

[44]Parliamentary proceedings, September 18, 2007, http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=304466

overwhelming majority of criticism comes from the fear that ethnic minorities will seek dual citizenship with their kin-states (BNS ir lrytas.lt inf. 2014).

There have been rounds of discussions on the possible referendum in conjunction with either parliamentary or presidential elections in 2008, at the end of 2011, in 2013, and in 2014, and the arguments have virtually been the same. For example, in 2011, the Human Rights Committee of the Parliament of Lithuania stated their support for a referendum if its formulation targets Article 12 of the Constitution. Their suggestion on how to avoid blanket statements which would open dual citizenship to any Russian was to reframe the question in terms of preservation of Lithuanian citizenship rather than in terms of gaining a dual citizenship. They called for an installation of voting via internet in an explicit attempt to enable the diaspora to participate in this referendum.[45] In the new round of discussions in 2013, again prompted by a proposal from a group of left wing MPs led by Paulauskas, the Committee on Legal Affairs stated that unlimited access to dual citizenship would be a threat to Lithuanian national security, with supporting arguments from government institutions like the Ministry of Foreign Affairs of the Republic of Lithuania and various NGOs, like the World Lithuanian Community and the Lithuanian Human Rights Association, and rejected the proposed referendum on the grounds that lack of societal support even from the main interest group, the diaspora, suggests that it would be an expensive failure.[46]

It is indeed crucial to the fate of the referendum proposals that the representatives of the diaspora have repeatedly announced that they do not support this idea, both because

[45] Press release by the Human Rights Committee of the Parliament of the Republic of Lithuania, 2011-12-07. http://www3.lrs.lt/pls/inter/w5_show?p_r=6275&p_d=119106&p_k=1.
[46] Evaluation of the proposal by the Parliamentary Committee on Legal Affairs, December 18, 2013, see http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=462533

the formulation of the question, which will determine the results, is not clear, and because referenda in Lithuania usually fail due to not gathering the required minimum amount of votes (BNS 2013b; BNS ir lrytas.lt inf. 2011). It remains to be seen whether such a referendum will eventually take place, and if it does, whether it will face a fate similar to the Hungarian attempt, where the referendum failed despite being geared towards ethnic Hungarians, or turn out to be an instance of grandiose mobilization of a majority of the electorate, similar to the turnout in the Lithuanian referendum on membership in the EU (which was twice that of Hungary) (Nohlan and Stöver 2010: 912, 913). Current debates refer to 2016, but it is not clear how the claim-response feedback loop can be broken, as the differing positions have remained stable over time, signifying once more the constant tension in the discourse of citizenship, which in turn allows us to approach citizenship regulation as a continuously relevant stateness boundary maintenance regime.

*3.3.1.2. Proposals to change the Constitution without a referendum.* As I explained earlier, referenda are difficult to execute in Lithuania. Consequently, some proposals, mostly produced by members of the diaspora, concentrated on legislative solutions which would deal with the problem on the constitutional level, but would allow the country to avoid a referendum (Narušienė 2013). Since only the first and the fourteenth chapters of the Constitution require a referendum for amendments, and the Article 12 which entails the general prohibition of dual citizenship "except individual cases provided for by law" is in the first chapter, the search began to identify an article in some other chapter that could be changed in some way which would restore the privileged access of ethnic Lithuanians to dual citizenship.

Ironically, no one has suggested that the Parliament should use its powers to change the Article 29 where the norm of nondiscrimination and non-privileging instituted, demonstrating once more the deep delegitimization of discrimination on the institutional-legal level. Most of the proposals in this cluster concentrated on Article 32 of the Constitution, which is in the same chapter as the Article 29 on nondiscrimination. Article 32 deals with the freedom of movement of Lithuanians:

> A citizen may move and choose his place of residence in Lithuania freely and may leave Lithuania freely.
>
> These rights may not be restricted otherwise than by law and if it is necessary for the protection of the security of the State, the health of the people as well as for administration of justice.
>
> A citizen may not be prohibited from returning to Lithuania.
>
> Everyone who is Lithuanian may settle in Lithuania.

Most of the article deals with citizen rights and thus is neutral in terms of ethnicity. However, the provision for the right to settle in Lithuania is confined to people of Lithuanian descent. This fact has been taken up by prominent political figures from the diaspora community in their quest to circumvent the nondiscrimination argument. For example, a return migrant, political scientist Kęstutis Girnius (2006), lists this right of establishing residence as proof that the "founders" of the Constitution intended for Lithuanians to have some privileges, next to the preamble and the Article 14 establishing Lithuanian as the state language.

The then chairperson of the Lithuanian World Community, Regina Narušienė (2007; 2009), who is a lawyer by profession, repeatedly insisted for several years that it would be enough to amend the Article 32 (or Article 18 which says that human rights are natural, or, as the official translation of the Constitution says, innate, – the Lithuanian word here, "prigimtinės", is a derivative of the word "birth"). She suggested adding a statement

that no Lithuanian person can be divested of Lithuanian citizenship acquired by birth, unless s/he renounces it (drawing on examples of Estonia, Czech Republic, Slovakia, Poland, and Spain, among others).

Her suggestion was rebuffed by then Chairman of the Constitutional Court Egidijus Kūris for inventing what he called "juridical abracadabras" (quoted in Ignatavičius 2007). On the other hand, the subsequent Chairman of the Constitutional Court Juozas Žilys appeared much more amenable to this proposal in a 2010 interview.[47] It is interesting to note how the Court under Kūris' leadership appears to at the same embrace the international norm of nondiscrimination and denounce the ways to bypass it offered by the examples of Constitutions of other countries, but this position is not unmaleable. One could say that this is an instance of a certain dynamic relationship between international norms and practices and the judges' socialization into those norms.

The most sustained rebuff of the proposal to solve the question of dual citizenship for Lithuanian migrants was presented by Vytautas Sinkevičius, one of the Constitutional Court judges, considered to be the foremost expert on constitutional law questions of citizenship in Lithuania. In his 2008 scientific article, Sinkevičius argued that, as long as Article 12 is in effect, any other attempts to change the Constitution with the goal of expanding the availability of dual citizenship would contradict the spirit of the Constitution and thus could not be acceptable. Therefore, it is possible to expect that any attempt to change any part of the Constitution in favour of ethnonational dual citizenship without touching Article 12 would be met with skepticism from the judges.

[47] "Teisininkas: jei leisime dvigubą pilietybę, 70 proc. Lietuvos piliečių bus „dvigubi"." 2010-02-11. http://www.anglija.lt/straipsniai/naujienos/lietuvoje/teisininkas_jei_leisime_dviguba_pilietybe_70_proc_lietuvos_pilieciu_bus_dvigubi.html.

In conclusion, there are not many prospects of finding a way to reinstall the ethnonationalist citizenship regime using the Constitution, referendum or not. Since the mandate given by the Constitutional Court was to revamp the Law on Citizenship so it does not contradict the constitutional imperatives of nondiscrimination and restrictiveness of dual citizenship, and since most politicians are weary of referendum-type blanket statements which would open the door for dual citizenship to those whom the repatriation clause was targeting, most proposals are focused on finding the optimal formulation of what those "individual cases" could entail. In the next subsection, I discuss the main proposals put forth by different political factions and the parliamentary debates on the drafts of the Law on Citizenship that attempted to accommodate the edicts of the November 2006 ruling.

*3.3.2. Legislative solutions.*

Legislative proposals that have been put forth in the quest to satisfy emigrant aspirations without changing the Constitution can be divided into two categories. The majority of proposals seek to produce a definitive list of those "rare and exceptional" cases in which dual citizenship would be allowed. Another road that some politicians take is to seek alternatives to dual citizenship by creating special quasi-citizenship status available to diaspora members. In this section, I review the various legislative proposals in order to evaluate the place of identitarian and stateness concerns in the politico-legal discourse on citizenship.

*3.3.2.1. Quasi-citizenship alternatives.* Some politicians accepted that the imperative of nondiscrimination in citizenship regulation cannot be bypassed, and yet wanted to find a way to grant privileges to Lithuanian emigrants. To find a solution, the

Prime Minister created a working group only a few weeks after the ruling was announced. The workgroup, which included Constitutional law specialist and one-time Constitutional Court judges Egidijus Jarašiūnas (designated the head of the workgroup) and Juozas Žilys, and very prominent social scientists and public figures Raimundas Lopata, Alfredas Bumblauskas, Vytautas Ališauskas and Vytautas Radžvilas (BNS 2006), in 2007 proposed to create a distinct legal status of a special relationship with Lithuania which would entitle one to less than full citizenship rights (Balsas.lt 2007).

It is peculiar that the head of the workgroup Egidijus Jarašiūnas called this "an original Lithuanian solution" (Delfi.lt 2007). In fact, it is likely that the inspiration came from some countries which have created a separate legal status for their diaspora members. Examples of such legislation can be found in the creation of Turkish "pink cards" in 1995 (which have become "blue cards" since 2009), "Polish cards" instituted in 2007, or the 2001 creation of "Hungarian national identity cards". This quasi-citizenship status grants various rights to the carriers of such cards, such as the permission to come to work or study in the ethnic homeland without any additional requirements for visas or permits (for more on such statuses see Bauböck et al. 2009; Faist 2007). Ultimately, the only difference from full citizenship status is the fact that these card holders do not have electoral rights.

The idea of a special legal status that is granted based on descent but falls short of full citizenship should be considered together with the development of the status of denizenship discussed in Chapter 1, where the rights that fall short of full citizenship are given on the basis of residency. Both of these statuses are symptomatic of the nation-states' reactions to increased migration pressures and of their efforts to maintain the boundaries

of stateness epitomized in the full citizenship status, which is not easily handed to either immigrants or emigrants.

Although this quasi-citizenship proposal would grant many of the rights ostensibly motivating pursuit of dual citizenship, it was dismissed by diaspora members as "humiliating" (Girnius 2006). Such a response lends support to my argument that even if citizenship is increasingly disassociated from rights, it is no less desirable for its identitarian dimension. The representatives of the Lithuanian emigrant community, like Vida Bandis[48], Kęstutis Girnius (2006), and Regina Narušienė (2007, 2009, 2013), note that the fact that this status would exclude the political rights of the citizenship, namely, voting and running for office, is an indication of the fear of the politicians that emigrants would vote for someone else and the desire to preclude them from changing the face of the political establishment. Unsurprisingly, this proposal was put forth by the left-wing government, while the majority of the diaspora tend to vote for the right. Regina Narušienė herself was supposed to be a member of the Prime Minister's working group, but, as is evidenced in Maksimavičius' (2008) report on the activities of the governing board of the World Lithuanian Community, she distanced herself from this endeavour, spearheaded the official denouncement of these proposals by the World Lithuanian Community, and went on to formulate her own proposals discussed above in section 3.3.1.2.. Danguolė Navickienė, who replaced Narušienė as the head of the World Lithuanian Community in 2010, said that this status would be equal to "a mayor giving you a golden key to the city which does not open any doors" (Stanišauskas 2012).

[48] The representative of World Lithuanian Community Vida Bandis, quoted in "Iš laisvos Lietuvos emigravę piliečiai dvigubos pilietybės negaus", 2010-12-02, http://www.anglija.lt/straipsniai/naujienos/lietuviai_pasaulyje/is_laisvos_lietuvos_emigrave_pilieciai_dvigubos_pilietybes_negaus.html

Ultimately, this proposal of quasi-citizenship was discarded due to such lack of support by the main interest group, but the process of its consideration puts two things in sharp relief. First of all, it highlights that, even after being offered all the rights that dual citizenship is supposed to safeguard, emigrants are not satisfied until they are fully acknowledged as belonging to the nation-state on a par with all other citizens, lending support to my proposition regarding the supremacy of the identitarian dimension in the conception of citizenship. Second, the efforts to find a legal status for ethnic migrants demonstrate the continuing interest of the Lithuanian state to maintain the ties with its diaspora, thus aligning with the mainstream theories on the behaviour of emigration countries, which makes the current dual citizenship regime that contradicts those theories especially fascinating and worth investigating.

*3.3.2.2. Negotiating the parameters of dual citizenship.* The suggestions on how to define the "individual cases" in which dual citizenship could be tolerated can be summarized as attempts to recreate the repatriation clause in some guise which would prevent ethnic minorities from being able to hold both a citizenship of Lithuania and of Russia, Poland or Israel, while opening such possibilities for ethnic Lithuanians.

The main proponents of the retrenchment of an ethnonational dual citizenship regime have been the right-wing opposition lead by the conservative/ Christian Democratic party Homeland Union, the party that stemmed from the independence movement and has the closest links with diaspora among all Lithuanian political factions. The right-wing political leader Andrius Kubilius (2007b) declared that "the main goal of citizenship is to preserve the link between citizens and their ethnic Homeland in the storms of globalization" (such statements lend support to my argument that citizenship is a boundary

maintenance mechanism employable by states under globalization pressures). Kubilius has repeatedly emphasized that a referendum that would result in a free-for-all dual citizenship would be dangerous for Lithuania and advocated a differentiation which would still acknowledge a special status of a Lithuanian person in relation to the Lithuanian state (Bardauskas 2014; ELTA 2009; Kubilius 2007a). He proposed to circumvent the wrath of the Constitutional Court by listing several special/distinct cases in which dual citizenship would be allowed. However, those special categories were definitely based on discrimination on the grounds of ethnicity, as the proposal created something akin to concentric circles dependent on the person's descent. The first two circles would consist of descendants of inter-war Republic of Lithuania. Ethnic Lithuanians would only be prevented from having dual citizenship if they had committed a crime against humanity or plotted against the Lithuanian state (a way to exclude Holocaust perpetrators and communist regime loyalists). Pre-war citizens of other ethnicities would also have to pass an exam on the Constitution and the Lithuanian language and to have legal income and domicile in Lithuania. Other applicants would be subject to additional conditions, such as a requirement that their second citizenship be with a country belonging to either the EU or the NATO (this was a way to exclude Russia). Children born to Lithuanian citizens abroad would also be eligible for dual citizenship.

Kubilius' proposal was enthusiastically endorsed by the governing board of the World Lithuanian Community.[49] A version of Kubilius' proposal was put into law in 2008 when a right-wing coalition of Christian Democrats and Liberals gained power in the government. However, it was vetoed by the President Valdas Adamkus in anticipation of

[49] The Board of the World Lithuanian Community addressing the Human Rights Committee of the Parliament of the Republic of Lithuania on May 31, 2007 (http://www.plbe.org).

a Constitutional Court challenge for violating the prohibition of discrimination or privileging on the basis of ethnicity and descent in the Article 29 of the Constitution. The President himself is a return migrant and has consistently championed the need to maintain links with the diaspora, but was not able to get around the limits circumscribed by the Constitutional Court, reluctantly acknowledging that this issue can only be resolved by a referendum (BNS 2010c; Digrytė 2008b). This situation testifies to the gridlock in which the November 2006 ruling has placed Lithuanian politicians, when the aspiration to an ethnonational boundary maintenance regime is foreclosed without diminishing its perceived necessity, placing the issue of dual citizenship into a perpetual feedback loop of claim-response within the circumscribed conditions of possibility.

After two years of deliberations and tweaking the 2008 proposal in attempts to find a more tenable balance between the Constitutional Court's restrictions and the perpetual need to accommodate Lithuanian emigrants, the Parliament formulated a modified proposal of the Law on Citizenship. It retained essentially the same provisions for dual citizenship and was again vetoed by the President, this time Dalia Grybauskaitė (in office since 2009). In a pattern similar to the previous president, Grybauskaitė continuously expresses support for dual citizenship for Lithuanian diaspora, but defers to the lawyers to find solutions (BNS 2010a), and vetoes legislative proposals that can be deemed discriminatory (in this case due the differential treatment of those whose second citizenship would be of a NATO or EU member state). The Law on Citizenship was passed by the Parliament on December 2, 2010, discarding the parts vetoed by the President, and now limiting dual citizenship availability to those pre-war Lithuanian citizens who left before the restoration of independence, similar to the 1991 law provision which had not been

challenged by the Constitutional Court in its rulings on citizenship, for children born to Lithuanian citizens abroad who gain the citizenship of the host country automatically by birth or marriage, and to people who have been granted citizenship by way of exception by the President. This was a compromise between the old and the new migrants in that it preserved the original exception – dual citizenship for those who left Lithuania due to political rather than economic considerations, – but also accommodated the new generation born abroad, although the latter are required to choose one citizenship at reaching majority. Most politicians are not satisfied with this compromise and continue seeking ways to expand the availability of dual citizenship to the more recent economic emigrants, but have not yet been able to find a formulation that could bypass Constitutional Court scrutiny.

The newest round of proposals in November of 2014 came from two sources – the President Dalia Grybauskaitė, and the MP Arminas Lydeka who was the principal author of the 2002 Law on Citizenship and has been championing ways to work around the limits set by the Constitutional Court.

The President's proposal was highlighted by a well-publicized case of a professional basketball player Žydrūnas Ilgauskas who gained American citizenship and automatically lost his Lithuanian citizenship. Contrasting this event with situations when the President of Lithuania grants Lithuanian citizenship by way of exception to foreign athletes in hopes that they will successfully represent Lithuania in the Olympics, many note the paradoxical nature of the situation where an athlete that Lithuania already had is given up due to the restrictive interpretation of Article 12 promulgated by the Constitutional Court. This time the proposals came from the President's office and sought to expand dual citizenship through the presidential power to grant citizenship by way of exception. The

evolving Law on Citizenship always contained the provision that the President can grant citizenship to a citizen of another state who has merit in promoting Lithuania and its interests, thus creating a certain group of dual citizens. The President proposed to use this power in a reverse logic and institute similar consideration of merit applied to those who already are, or have been in the past, citizens of Lithuania. She suggested that these people could either be allowed to gain citizenship in some other state without losing their original Lithuanian citizenship, or have their Lithuanian citizenship restored if they had lost it.

In the parliamentary debates that took place exactly 8 years after the infamous ruling[50], the representative of the President, her chief advisor R.Svetikaitė, argued that this proposal meets the stringent requirements set by the Constitutional Court, as such instances would indeed be rare, and would even address an instance of discrimination when citizens of other countries have a better chance of holding dual citizenship based on merit than Lithuanian citizens do. The proposal sparked a lively debate. Supporters of the proposal to extend the availability of dual citizenship by exception, like MP Arminas Lydeka, lamented that what we really need is a referendum, but the President does not have the power to call for one, so this little improvement is better than none. In contrast, some MPs, like the social democrat E.Jonyla and a left-wing populist Kęstutis Daukšys, argued that the possibility to restore Lithuanian citizenship to someone who had previously chosen to give it up would be a devaluing of Lithuanian citizenship. The majority of the MPs from the whole political spectrum who spoke in this debate, like social democrat Birutė Vėsaitė and conservative MP Arimantas Dumčius, questioned the possibility to judge which Lithuanian citizens have

[50] Parliamentary debates on November 13, 2014, minutes available at http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=487627.

more merit to Lithuania than others and expressed concern with creating unequal treatment of Lithuanian citizens. Populist MP Vytautas Matulevičius proclaimed:

> We are really turning citizenship into a privilege, kowtowing to a part of the nation, let's call it the elite, who earn hundreds of millions of litas, and are not essentially solving the problem which is relevant to thousands of Lithuanian emigrés. I call upon all to think about this. Not to create privileges, but to finally take up creating what our co-national, the diaspora, are waiting from us.[51]

The next proposal came from the most prolific politician in terms of citizenship legislation, the liberal MP Arminas Lydeka. He suggested to remove the requirement for children of Lithuanian citizens who gained another country's citizenship automatically by birth to choose only one citizenship when they reach the age of 21. He argued that this would meet the restrictions emphasized by the Constitutional Court, since there would be no more than several hundred such cases, and appealed to the MPs to not make the children choose, figuratively speaking, between their father and mother. The parliamentarians who participated in the debate rehashed the usual arguments, emphasizing the need to solve the questions of dual citizenship in a more complete manner, debating the issues related to the idea of referendum, and lamenting the need to keep chipping away at the law piece by piece due to the restrictiveness of the Constitutional Court. Considering that, as a conservative MP and a former Constitutional Court judge Stasys Šedbaras argued, these children did not choose to have a second citizenship, this individual case of dual citizenship allowance appeared relatively benign, thus the voting was in favour of Lydeka's proposal, which now awaits further steps in the legislative process.

Thus, the pattern of the claim-response dynamic in the Lithuanian politico-legal discourse has become a feedback loop where the Parliament crafts a proposal as a response

[51] Parliamentary debates on November 13, 2014, minutes available at http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=487627.

to the restrictive claims of the Constitutional Court, then the President vetoes the law as a less contentious response to the Court's claims, until the cycle begins anew and the Parliament keeps looking for new ways to craft their response so the result would be different. So far, neither President has been able to substantiate their declarations of support for the availability of Lithuanian citizenship for ethnic Lithuanians abroad due to the way the Constitutional Court circumscribed the conditions of possibility. Left-wing MP Povilas Gylys (2014) called the situation created by the November 2006 ruling a "juridical trap" and reiterated the need to solve the problem of dual citizenship in a more complex manner rather than these continuous attempts to patch it up. Why is the Parliament reluctant or unable to offer pathways which would avoid the charge of discrimination and yet would not make dual citizenship available indiscriminately? My argument is that we need to look into concerns with stateness if we want to understand the behaviour of both the judges (see Chapter 4) and the politicians.

*3.3.3. The spectre of Russia: stateness concerns.*

Lithuanian politics is fundamentally grounded in its geopolitical realities vis-à-vis the EU and Russia. Both the effects of EU conditionality (see Chapter 4) and the fact that Russia is a significant factor in the political discourse of postcommunist countries has been well established (Rose et al. 2006). Any political action can be interpreted as either pro-EU or pro-Russia – the choice between the two is considered to be a zero sum game.

The proposal to allow dual citizenship only with the countries of 'Euro-Atlantic integration' recognized as such by the Parliament of Lithuania has been precisely an attempt to include diaspora in America and other Western democracies, as opposed to only the migrants and their families in the EU, and to exclude Russia. Although this proposal

was endorsed by Western emigrants themselves, they tread the ground of potential accusations of discrimination carefully, for example, the Swiss Lithuanian Community suggested regulation of dual citizenship with particular countries via bilateral treaties (Šveicarijos Lietuvių Bendruomenės pozicija dvigubos pilietybės ir užsienio lietuvių vaidmens Lietuvos gyvenime klausimu 2007).

Political commentator Gintaras Aleknonis (2007) emphasized that the emigrants also lament the unequal position of forced deportees in Siberia that could result from the attempts to exclude Russia. On the other hand, the suggestion of a referendum which would give blanket allowance for dual citizenship, and thus would enable Lithuanians in Russia to freely access dual citizenship, has been met with fear. Earlier in this chapter I quoted the reaction of the leader of the right wing opposition and two time Prime Minister Andrius Kubilius to the proposed referendum. He emphasized that instituting dual citizenship avaialability would be "a present to the Kremlin" (Kubilius 2007a) and expressed fear that Russia would pressure the approximately 200 000 Russian speakers that live in Lithuania to get both citizenships and we could end up having "hundreds of thousands of Russian citizens living here" (BNS 2013c). One way or another, Russia looms large in the background of the citizenship discourse.

More than two thirds of the population do not identify themselves with politicians who proclaim to be defenders of national interests (Rose et al. 2006: 321), yet fear of Russian influence is a significant theme in Lithuanian politics (Aleknonis 2007). Perception of Russia as a threat is not unfounded in Lithuania, especially keeping in mind the previous President's impeachment on alleged ties with Russia (see more in Clark and Verseckaite 2005 and below in Chapter 4). The elements of ethnicity and national security

intertwine in the hostility of nationalist politicians towards Russia and the tension between dual citizenship as a tool to retain ties with emigrants and as a potential gate for Russian influence. During the initial phases of state building, such concerns played a significant role in shaping the Constitution in general and the regulation of citizenship in particular, and they continue to exhort considerable pressure on current discourse. I return to the more detailed discussion of the way fear of Russia plays out in the Constitutional doctrine on citizenship in the next chapter.

### *3.4. Concluding remarks.*

The legal situation regarding dual citizenship continues to display the same discursive patterns – the majority of politicians agree that the ultimate goal is to find a way back to the constellation which enabled ethnic Lithuanian émigrés to retain their Lithuanian citizenship without opening the door to representatives of other ethnicities previously excluded by the repatriation clause, but they also recognize that the antidiscriminatory ruling of the Constitutional Court has foreclosed any easy avenues. Even the current Chairman of the Constitutional Court Juozas Žilys, as mentioned above, has become complicit in this quest, suggesting potential Constitutional amendments, such as including a provision that people who acquire Lithuanian citizenship by birth can only be stripped of it if they themselves request it, but was counteracted by those who fear that such a formulation would still include ethnic minorities and thus open up the venues for hundreds of thousands potential dual citizens with Russia and Poland.[52] However, so far the majority of proposals have remained at the level of the Law on Citizenship.

[52] "Teisininkas: jei leisime dvigubą pilietybę, 70 proc. Lietuvos piliečių bus „dvigubi"" 2010-02-11. http://www.anglija.lt/straipsniai/naujienos/lietuvoje/teisininkas_jei_leisime_dviguba_pilietybe_70_proc_lie

If we consider Lithuania's relationship with the two most prominent factors that help orient its landscape – the EU and Russa – from the perspective of stateness concerns, we begin to discern the unifying thread that can help explain the paradoxical outcome of an emigration country with an unintentional emigrant-unfriendly disposition. On the one hand, Russia is perceived as a threat to stateness, thus citizenship regulation is geared to police and maintain that boundary between Lithuania and Russia more than any other country or phenomenon, inevitably leading to what can be perceived as discrimination. On the other hand, euroatlantic integration has been seen as a guarantee to safeguard the stateness by virtue of distancing Lithuania from Russia; however, the decoupling of people, rights and territory due to the common European space and the hegemony of the norms of nondiscrimination end up obstructing those efforts of stateness boundary maintenance.

The most current version of the Law (2010) obeys the ruling by mandating stripping of the Lithuanian citizenship of any person who emigrates after the reinstatement of independence and gains citizenship of another country, addresses the problem of emigrants' children born in *ius soli* countries and possible automatic gain of another citizenship through marriage by allowing them to retain both citizenships (however, children with dual citizenship are mandated to choose one of them within three years of reaching maturity), thus highlighting the difference between those who choose another citizenship and those who become dual citizens not by their own volition, reinforcing the distinction that feeds the question of loyalty and conscious identification, and heavily landing on the side of duty and loyalty to the state as opposed to a voluntaristic search for

tuvos_pilieciu_bus_dvigubi.html. Dainius Žalimas "Dvigubos pilietybės siekių klystkeliai", 2008-09-17, http://www.delfi.lt/news/ringas/lit/article.php?id=18565147&categoryID=10459539.

a better livelihood.[53] Some arguments presented for the distinction between those who left pre- and post-independence, couched in legal terms, emphasize that those who left Lithuania during the Soviet occupation can be characterized as a special case, a condition necessary for allowing dual citizenship according to the Article 12 of the Constitution, since occupation provided special circumstances, but leaving the country after independence cannot be considered a special case, and thus allowing the new emigrants to gain dual citizenship would make it available for the majority of the country's citizens and thus counteract the Constitutional mandate that dual citizenship is allowed only in special cases.[54] The law does include the provision to enable dual citizenship with particular countries via bilateral treaties, but so far there are no such treaties signed. However, the public discourse is still characterized by a continuous trickling of proposals to expand dual citizenship possibilities for ethnic Lithuanian émigrés.

Ultimately, the discussion on the legal changes that would allow politicians to counteract the ruling of the Constitutional Court keeps coming back to the potential amendments of the Constitution. On the one hand, then former President of Lithuania Valdas Adamkus acknowledged that the Constitution was written at a time when citizenship rules had to be stricter, but the current situation required corrections (quoted in Dokšaitė 2007). There have been voices who declare that the Constitution is not above the will of the people (Praninskas 2006) and that the demos has a right to decide its own composition. In fact, some, like a public figure Darius Kuolys, the then head of a prominent

[53] "Dvigubą pilietybę įteisinantis įstatymas ekspertų paramos nesulaukė " 2010-11-17, http://www.15min.lt/naujiena/aktualu/lietuva/dviguba-pilietybe-iteisinantis-istatymas-ekspertu-paramos-nesulauke-56-124762#axzz1oBPzrStZ. Dainius Žalimas "Dvigubos pilietybės siekių klystkeliai", 2008-09-17, http://www.delfi.lt/news/ringas/lit/article.php?id=18565147&categoryID=10459539.

[54] Head of the President's working group on the citizenship regulation, professor of international law Dainius Žalimas, quoted in "Siūloma įteisinti „lietuvio kortą"", 2009-02-10. http://www.anglija.lt/straipsniai/naujienos/lietuviai_pasaulyje/siuloma_iteisinti_lietuvio_korta.html.

think tank Civil Society Institute and a former Minister of Education and aide to the President of Lithuania, say that this decision has already been made in the Constitution by proclaiming that the state is created by the nation which is sovereign, therefore, a referendum on this question would be a humiliation to the Lithuanian nation (quoted in Maksimavičius (n.d.)). Such pronouncements drew criticism from Egidijus Jarašiūnas, former Constitutional Court judge and one of the creators of the Lithuanian Constitution (albeit representing a minority opinion during the drafting (Žilys 2013)), for conflating the civic nation with the cultural ethnie.[55] Thus the stalemate continues: the public and especially the diaspora are overwhelmingly in favour of dual citizenship with differential treatment based on ethnicity, the politicians are looking for ways to restore this type of stateness boundary maintenance regime, and the Constitutional Court continues to preemptively block any transgressions against the norms of nondiscrimination and restrictive access to dual citizenship. Considering that the Court used to espouse a doctrine of differential treatment of different groups of citizens and supported the special status of the descendants of interwar Lithuanian citizens, the ruling stands out as something that needs to be explained. In the next chapter I attempt to offer such an explanation by reviewing the proffered explanations of the effects of the EU conditionality vs. the prominence of the concerns with stateness. I conduct in-depth analysis of the development of the Lithuanian Constitutional doctrine on citizenship over time in order to distill the key factors guiding the Constitutional Court's judgments.

[55] Quoted in the transcript of a discussion on national radio on February 12, 2007 "Kokių pasekmių turės KT nutarimas dėl Lietuvos pilietybės?" // http://www.balsas.lt/naujiena/34869.

## Chapter 4. Norms vs. interests: Analysis of Constitutional Court rulings

In the previous chapters I presented the curious case of the ruling of the Constitutional Court on Lithuanian dual citizenship, its demographical and historical background and the reaction in the public sphere, highlighting the contrast between the ruling of the Constitutional Court that struck down preferential treatment of ethnic Lithuanians in the attribution of dual citizenship on the one hand, and the outpouring of overwhelming support for ethnically informed policies among the population and politicians on the other hand. Together with the mainstream citizenship studies theories pertaining to a country of Lithuania's pedigree that we discussed in Chapter 1, the review of the facts on the ground reinforces the notion that such a ruling of the Constitutional Court is improbable, counterintuitive, represents a saltation from the previous developments, and prompts additional inquiry.

In this chapter, I delve deeper into the analysis of the legal texts associated with this ruling in an effort to extract an explanation of the outcome that not only caught the country and its emigrants off-guard, but also contradicts mainstream scientific predictions. In relation to the goals of this dissertation, this chapter serves to flesh out the proposal that the improbable developments in dual citizenship regulation are due to the conditions of possibility brought about by the paradoxical effects of the mutual imbrications of international norms and stateness concerns. Since the *raison d'être* of the norms of minority protection lies precisely in counteracting the negative implications of stateness concerns that result in securitization of state-minority relations (Galbreath and McEvoy, 2011), it is very interesting to see the actual product of the interaction of these two powerful vectors. The empirical analysis demonstrates that both of these factors need to be taken

into account if one is to fully understand the seemingly counterintuitive outcome of the Lithuanian case and be able to appreciate its comparative purchase and relevance to the larger patterns of international trends in citizenship regulation, which is the subject of the next chapter. On a broader scale, this chapter also contributes a building block to the analysis of the effectuality of EU conditionality on candidate countries and to the micro-analysis of judicial review that is considered to be one of the key factors in support of the liberalization/convergence hypothesis (Joppke 1998).

I begin by discussing ideational analysis and then presenting the hypothesized ideational factors of the case, namely, the influence of international norms in general and European integration conditionality more specifically, and address the peculiarities of applying ideational analysis to judicial review. Then, using the process tracing prescription of looking for 'fingerprints' of the ideas that would demonstrate the relevance of international norms of nondiscrimination vs. values associated with stateness, I analyze the textual evidence of the norms that are called upon by the Constitutional Court when passing judgment on citizenship issues. I triangulate the content analysis of the rulings of the Constitutional Court pertaining to citizenship with data gleaned from archival research of documents of the working group which prepared the text of the Lithuanian Constitution which was discussed in Chapter 2 and from interviews with some of the main actors of this critical juncture in Lithuanian citizenship regulation.

### *4.1. EU conditionality or stateness concerns: ideational approach*

*4.1.1. Ideational analysis: how do we know if norms matter?*

As the Lithuanian case of dual citizenship appears counterintuitive in the context of scholarly theories and public preferences, it becomes even more important to disentangle the justification and legitimation of the Constitutional Court ruling in order to understand it (Cortell and Davis 2000: 71; Hall 2003; Jutila 2009: 630). As Berman (2013: 232) notes, ideational context can shape actors' behavior even if they do not believe in it. In this chapter, I conduct ideational research to explore the hypothesis which attributes this ruling to the influence of international norms of nondiscrimination.

*4.1.1.1. Ideas as objects of empirical study.* In the perennial debates over the value of ideas-, institutions-, and interests-based explanations, ideational research at times is treated like a stepchild (or at best recognized as a "valuable supplement" (Jacobsen 1995: 285)). Ideational approaches have been accused of ad-hoc leanings, of using ideas as a catch-all residual category, of being too fuzzy, i.e. failing to provide definitions or specify the mechanisms at work and merely producing correlational arguments (see discussions in Checkel 1999: 85 *passim*; Cortell and Davis 2000: 68 *passim*).

Proponents of ideation research retort that other types of research are just as guilty of the same sins, and note that one of the main problem lies in the attempts to operate in blanket statements, whereas better results can be achieved by conducting middle-range ideational research (Berman 1998: 21, 2001: 241). As Parsons (2003: 2-3) observes, "the generality of the political world is an open question <…> The mere possibility of a deeply particular, "socially constructed" world makes it illogical to accept generality as a standard a priori for theoretical value." *Pace* Campbell (2001: 182n5), a case study is especially suited for studying the mechanisms of how ideas operate through process tracing (see

George and Bennett 2005). Along those lines, I refrain from overarching generalizations, and look to the cumulative ideational research for a theoretical toolkit for the Lithuanian case at hand.

Ideas have been defined and categorized variously, but most typologies are based on some distinction between cognitive and normative ideas, as well as on the distinction between different levels of generality, such as worldviews/philosophies/paradigms, programmatic beliefs, and policy ideas (e.g. Berman 1998; Campbell 2001; Schmidt 2008), but beyond these general schematics each scholar defines them based on their needs. For the purposes of my research, I define norms in an encompassing way as guides for conduct and for judgment thereof (for a similar understanding see Cortell and Davis 2000: 69). My dissertation deals with the dynamic interaction between and within institutionalized norms and their discursive environments, consequently, it could be seen as roughly falling under the heading of discursive institutionalism (see Schmidt 2008). As Hay (1996: 255) points out, a political response must address the narrative construction of a crisis rather than its factual underlying conditions, which underlines my choice to approach the Lithuanian case through textual analysis. Schmidt (2008: 303) emphasizes the potential of discursive institutionalism, which conceptualizes ideas as the substantive content of the discourse, and discourse as the interactive process of conveying ideas, to provide a better account for the dynamics, rather than the statics, of ideational institutionalization. In terms of discourse analysis, Constitutional Court rulings can be treated as a Claim-Response pattern (see Hoey 2001 for discourse type classification) where the affirmation or denial of a claim of the plaintiff is justified by invoking the substantive content of the discourse as it is institutionalized in the Constitution and previous Constitutional Court jurisprudence.

Discursive institutionalism is especially suited for the type of non-normative analysis of normative ideas that I aspire to, since it allows us to take into account the role and interaction of ideas at different levels of generality and different institutional positions, and explore the dynamics of their interactions, demonstrating how this interaction can produce unintended, at times paradoxical consequences. We have discussed the ideas in the Lithuanian public discourse (Ch.3) and the institutionalized constitutional norms (Ch.2), and below I discuss the interactions of these ideas in the rulings of the Constitutional Court. My research fits in what Kostakopoulou (2005: 234) has called "the normative turn in European studies", but instead of following the path of normatively inclined political theory, I strive to stick close to the ground and look for the ways normative ideas actually operate in political realities. My analysis is squarely centered on what is, rather than on what ought to be, thus placing me in a minority (albeit growing – see Finnemore and Sikkink 1998) among the scholars interested in the vicissitudes of the ideational aspects of citizenship.

*4.1.1.2. Ideas as parts of a causal mechanism.* According to Berman (2001: 233), theoretical advancement of ideational research depends on answering the question of how certain ideas rise to prominence and occupy the place of old beliefs, how they gain a life of their own, and how they influence political behavior. In the context of my research, the first question seems relatively easy to answer, seeing how the fall of communism provided an ideological opening that was especially conducive for the Western norms to come flooding in; this story has been sufficiently repeated and does not warrant a recap. What it does warrant, however, is a cautionary note: we will get more returns from looking at the interaction of several discursive layers, rather than focusing on the exogenous paradigmatic

shock, thus heeding the admonition to explore the superimposition of international and domestic norms in the research on norms diffusion (Checkel 1999).

The question of whether the ideas under investigation have achieved a life of their own (Berman 1998: 18) is addressed here by explicating the paradoxical and unintended consequences of certain institutionalized norms, whence, so to speak, the Lithuanian state ends up cutting the branch it is sitting on by cutting of dual citizenship availability to its numerous emigrants. One of the main characteristics of ideational institutionalization is its path-dependent effects. Parsons' (2003) study on European integration reveals how the institutionalization of certain ideas progressively preempted alternative ideologies. In a sense, the Lithuanian case of dual citizenship faces a similar predicament – the way that putting norms into a Constitution binds and conditions the prospects of employing certain ideas in the future, but can also reify certain tensions and contradictions. Another shortcoming of not only ideational, but any, research that aspires to generalizability is the tendency to err on the side of stability, continuity, inertia, and to privilege equilibria (see Lieberman 2002). My dissertation goes against this impulse and focuses on the role of inter-ideational tensions and frictions as a more fruitful basis for understanding unexpected outcomes.

As far as Berman's third question is concerned, I am aware of the pitfalls of assuming the things that actually need to be established, therefore, it is important to take care to specify the carriers and the content of both the ideas and the interests that could serve as explanatory variables in the case under investigation. In section 4.1.2 I overview the sources of international norms and the mechanism through which they can exert

influence on Lithuanian institutions, and in section 4.1.3 I discuss the characteristics of judicial review as the vehicle of ideational effects.

Blyth (2002) offers a useful understanding of the roles ideas play: they (1) reduce uncertainty in periods of crisis, (2) enable collective action and coalition building, (3) can be wielded as weapons in the struggle over existing institutions and (4) used as blueprints for constructing new ones, which then (5) serve as stabilizing rallying points. In a sense, this is a conceptualization of the "life cycle" of ideas (Finnemore and Sikkink 1998). To the extent that my research taps into the category of "ideas as weapons," it is haunted by Jacobsen's (1995: 285) question of whether ideas are more than "intellectual rationales for material interests." However, to put the question in such reductionary terms would mean to lose sight of the more interesting question, namely, what are the conditions of possibility of wielding ideas as weapons, and what results does that yield? Berman (2001: 241) reminds us that ideational analysis can contribute to understanding both the motivations and preferences of the actors and the opportunities and constraints of their environment. In the Lithuanian case, the Constitutional Court acts in a relatively isolated environment, so the opportunities and constraints are contained in the text of the Constitution, while the motivations and preferences of the authors can be gleaned from the deliberations and justifications presented in the rulings. The text of the Constitution was analyzed in Chapter 2, and the texts of the rulings are analyzed below in section 4.2.

*4.1.1.3. Process tracing of the role of ideas.* In my quest to identify the influence of norms, I follow the process tracing approach and look for expressions in the discourse that would be expected if certain conditions were met. Process tracing is especially relevant to the inquiry into the Lithuanian case, since the decision to curtail dual citizenship goes

against the predictions of citizenship studies discussed in Chapter 1 and is an unlikely outcome, therefore, the analysis should concentrate on identifying the conditions of possibility of such a paradox.

Four types of evidence can be utilized in process tracing: pattern (the outcome one would predict), sequence (hypothesized cause happened before the effect), trace (mere existence of certain pieces of evidence is proof of existence of a causal mechanism) and account (the content of the empirical material, in our case texts) (Beach and Pedersen 2013: 99-100). In the Lithuanian dual citizenship case, the pattern is represented by the expectation that if nondiscriminatory norms play a role, the Constitutional Court ruling will conform to the imperative of nondiscrimination; the sequence is represented by the EU normative pressure and conditionality existing before the ruling was made; the trace is represented by the fact that there was a challenge based on the norm of nondiscrimination to which the Court was obligated to respond; and the account is represented by the actual contents of the Constitutional Court rulings. On a more concentrated level, within the texts of the rulings themselves, we would trace the invocations of international norms vs. of values associated with stateness, and evaluate their relative frequency and positive vs. negative salience.

Since process tracing is based not on probability, but on the principle of necessary and sufficient conditions of possibility, the types of empirical tests of the parts of causal mechanism are based on the dimensions of uniqueness (sufficient condition) and of certainty (necessary condition) which produce four types of empirical tests (Beach and Pedersen 2013: 101-105; Collier 2011; Rohlfing 2012: 182-183). These tests are not

substitutes, but rather complements, and the strongest argument can be made in case where all of them are satisfied.

The weakest test is called "straw in the wind", which is neither sufficiently unique nor certain, such as contextual description, which is usually too vague or multifaceted to be considered as proper evidence. However, if there are many clues, and if they challenge alternative explanations, they add to the strength of one's explanation. In the Lithuanian case, the preceding two chapters presented such contextual clues which established that the new restrictions on dual citizenship challenge the liberalization/convergence hypothesis and do not serve state interests of maintaining ties with co-ethnics, lending initial support to my proposition that such an unlikely result must be an unintended consequence of the combination of the hegemony of international norms of nondiscrimination which preclude preferential treatment of Lithuanian diaspora and of continual relevance of stateness concerns which preclude the liberalization of access to citizenship.

A certain but not unique test is known as a "hoop" and is usually used to reject alternative explanations: if we fail to find a certain kind of evidence, that hypothesis is clearly rejected, but if we do find that evidence, it is not yet sufficient for accepting the explanation. Failure to find references to either international norms or to stateness in the Lithuanian Constitutional Court rulings would result in rejecting that factor as an explanation of the paradoxical outcome, but if we find them both, we could not say which one of them is the correct explanation, and if we find only one of them, that in itself would not be sufficient to prove causality. We would need to employ hoops that are increasingly harder to jump through – in this case, I aim to evaluate not just the existence of the explanations, but also their relative prominence and normative salience.

A test that is unique but has low certainty is known as a "smoking gun" – a piece of unlikely but very strong evidence. If we find it, our explanation gains great support, but if we fail to find it, that does not mean rejecting the hypothesis. In the Lithuanian Constitutional Court rulings, an equivalent of a "smoking gun" would be explicit rejection of either international norms or stateness values, or explicit affirmation of the precedence of one of them over the other, neither of which is very likely in a carefully worded legal text.

The strongest possible test is known as "doubly decisive" – finding this type of evidence would at once confirm our hypothesis and reject alternative explanations. This type of evidence is even less likely than a "smoking gun" and should not be relied upon in most research. In the Lithuanian case, a "doubly decisive" piece of evidence would be statements from the judges who passed the ruling on dual citizenship where they would explain how exactly the court came up with the arguments laid out in the ruling and to what they gave precedence in their deliberations – to international norms or to stateness concerns. Unfortunately, the judges are bound by the requirement of secrecy of the deliberations that take place behind closed doors, so it is not possible to get such information. However, if we triangulate the justifications provided in the text of the ruling itself, the questions and comments made by the judges in the public part of deliberations, and snippets of reasoning revealed by the judges in public interviews, it is possible to gauge the motivation behind the ruling, so I incorporate such elements into the discussion of the data.

Beach and Pedersen (2013: 104-105) suggest that the bulk of evidence should come from "hoop" tests, because "smoking guns" and "doubly decisive" tests are too unlikely to

be relied upon. Therefore, the main focus of the empirical research performed in the second half of this chapter is on the relative frequency and positive vs. negative salience of references to international norms vs. to values of stateness. In the next two subsections I delve deeper into what each of these alternative explanations entails.

*4.1.2. Human rights and European conditionality*

The first part of the two-pronged approach to explaining trends in citizenship regulation that I advocate concerns the tensions between the hegemony of international norms of non-discrimination that translates into the limits of a country's ability to favor its co-ethnics in designations of citizenship on the one hand, and the reinforcing of identitarian concerns that is produced by the feedback loops of postnationalist developments, on the other. In Chapter 1, I talked about how European integration is supposed to bring forth postnational sensibilities and prompt postcommunist countries to abandon ethnonationalist orientations, and argued that the decoupling of rights and citizenship ends up by reinforcing the identitarian dimensions of citizenship, and in Chapter 3 I demonstrated that this reinforcement is actually observable in Lithuanian public discourse on citizenship. In this section, I discuss the international norms which delegitimize identitarian elements in citizenship regulation, and later I explore whether they actually play a role in the rulings of the Constitutional Court. The mechanisms through which such international norms are supposed to operate can be horizontal (socialization of elites, emulation and diffusion of acceptable practices), vertical top-down (normative pressure and conditionality applied by international organizations whose membership a country is seeking), and vertical bottom-up (normative pressure exerted by domestic civil society organizations) (Grittersová 2013:

3). Due to the relative isolation of judicial review from societal pressures, we can bracket the third type of normative influence and concentrate on the first two mechanisms.

*4.1.2.1. Central and Eastern Europe as the target of international norms.* One of the key early concerns prompted by the fall of communist regimes was the threat of ethnonationalist conflics. The country boundaries in Central and Eastern Europe have changed enough over the past couple centuries to ensure that the dictum of nationalism which requires the state and the nation to overlap (as identified by Gellner (1998) could not be achieved, thus opening a space for continuous relevance of nationalist orientations of some members of the polity. Very early on in their independence, CEE countries declared their desire to "return to Europe", expressed as integration into Western European political structures, epitomized by the European Economic Community (now the EU), but also including others like the Organization for Security and Co-operation in Europe and the Council of Europe, which were perceived as precursors or correlates to EU membership. These structures, in turn, put forth the conditions of such integration, chief among them certain standards of human rights and, more specifically, minority rights.

The international hegemony of the norms of non-discrimination, where the requirement of respect for minority rights was a prerequisite for acknowledging a country's independence, can be traced from the post-Westphalian concern with religious group rights, through the concern with political instability and violence related to $19^{th}$ – $20^{th}$ century nationalist movements, to the human rights imperatives prompted by the experiences of the World War II, although during the Cold War its implementation was subservient to superpower interests (see Jackson Preece 1997, or Galbreath and McEvoy 2011, Ch.4, for an overview).

Wilmer (2004) suggests that minority rights have an inevitably international dimension due to the fact that the very stateness of any country is dependent on international (more specifically, European) norms of a state's attributes and inter-state relations. What Galbreath and McEvoy (2011) note, however, is the fact that the obligations towards minority rights instituted by the League of Nations were only applied to Central and Eastern European states. After the fall of communist regimes we saw a similar pattern: organizations and policies geared towards minority protection were revitalized, but their main focus remained on postcommunist countries (Kymlicka 2007a, 2007b). This attention was prompted by two-fold concerns: first, the perceived threat of instability in states engendered by minorities that strive for either regional autonomy, outright independence, or ratachist intentions to leave one state and join another where the titular nation is their ethnic kin; and, second, the fear of certain state behaviour, such as violence towards separatist minorities within the country or irredentist claims on portions of other countries where kin-minorities are located (Galbreath and McEvoy 2011). The nesting-doll quality of the ethnic composition of Central and Eastern Europe has lent itself to such concerns in more ways than any other location, in large part due to the peculiarities of the Soviet Union and its satellite regimes.

*4.1.2.2. Organization for Security and Co-operation in Europe.* The first step in revitalizing the concern with human rights in Europe was the 1975 Helsinki Conference on Security and Cooperation (CSCE) in Europe which founded the Organization for Security and Cooperation in Europe (OSCE). Although the Soviet Union was formally composed of fifteen republics with their own titular nationalities, the actual authoritarian character of the state and its confluence with Russian imperialism allowed the representatives of non-

Russian ethnicities to take up the claim of being a minority and to make demands for the rights covered under the Helsinki Final Act of 1975.

The Helsinki groups that sprang up in communist countries became the focal point for dissident mobilization, which in turn helped bring forth democratization movements and the fall of communist regimes (Galbreath and McEvoy 2011; Thomas 2001). Thus from early on human rights concerns served as a way to highlight the contrast between democratic Western and lacking Eastern states. The CEE promoters of such attitudes found themselves in a peculiar position when their countries gained independence and could no longer claim the mantle of the victim, instead gaining the responsibility to ensure human rights within their borders against the perceived ethnonationalist impulses. In fact, the Helsinki Group played an active role in formulating legislation regarding minority rights in, for example, Poland (Schwellnus 2005). Faced with the disintegration of communist regimes and consequently the loss of the position of Soviet Union/ Russia as the perverse guarantor of regional stability, international organizations hastened to hone the human rights imperatives and to spell out the particular emphasis on minority rights.

The first such spelling out of minority rights occurred during the second meeting of the Conference for Security and Co-operation in Europe in Paris in November, 1990, when the heads of state signed *The Charter of Paris for a New Europe*, reaffirming an anti-discriminatory stance and protection of minority rights as "the bedrock on which we will seek to construct the new Europe" (CSCE 1990: 4). As Galbreath and McEvoy (2011: 70) note, this charter established the main parameters of the European minority rights regime: awareness of inter-state interests in minority issues due to the phenomenon of ethnic kin-states abundant in Europe; an emphasis on the minority's belonging to the state where they

live as an attempt to warn the political establishment of the state against casting minorities as their "others" and to discourage minorities from separatist and irredentist actions; and a direct linkage between minority rights and human rights, and between minority rights and democratic institutions, establishing minority rights as the litmus test of the quality of democratic transition of postcommunist states.

The idea of institutionalizing minority rights monitoring was banded about in the OSCE since the fall of the Iron Curtain, culminating in the 1992 Helsinki Summit creation of the office of the High Commissioner on National Minorities. The Commissioner was charged with monitoring and providing "early warning" and "early action" whenever tension regarding minorities threatened to escalate into instability and violence without falling on the side of either of the conflicting parties (CSCE 1992).

The Commissioner traveled to locations of tensions, conducted "fieldwork" and produced recommendations. One of the key concerns for the Commissioner was legislative proposals, the majority of which concerned citizenship and language laws (Galbreath and McEvoy 2011: 73-74), thus it is relevant to inquire whether an effect of such pressures can be seen in citizenship regulation in the region, and in Lithuania in particular. It is important to note that the European Commission (the executive body of the European Union) explicitly referenced adherence to the High Commissioner's recommendations as part of its evaluation of the progress of candidate countries in their quest for EU membership (see e.g. European Commission 1998: 8), highlighting the symbiotic relationship between various organizations forming the hegemonic regime of anti-discriminatory norms that CEE countries were expected to adopt.

*4.1.2.3. The Council of Europe.* Another organization that exists in a symbiotic relationship with the European Union is the Council of Europe. This organization was founded in 1949 as an early attempt at European integration, and although this function was taken up by the European Economic Community instead, the Council of Europe made a crucial contribution by adopting a binding *Convention for the Protection of Human Rights and Fundamental Freedoms*, better known as *The European Convention on Human Rights* (Council of Europe 2010). The convention established the European Court of Human Rights that can be addressed by either individuals or states. Membership in the Council of Europe is a prerequisite for membership in the EU, and its Conventions are considered to be a part of the *acquis communautaire*. Since the fall of the Iron Curtain, the Council of Europe has reimagined itself as the main watchdog of postcommunist countries' adherence to democracy, rule of law, and the protection of human rights, especially minority rights. With such focus, in 1995 it adopted the *Framework Convention for the Protection of National Minorities* (Council of Europe 1995). The text references UN and CSCE documents, reinforcing the symbiotic nature of the hegemony of international human rights norms.

Convention pronouncements like Section II, Article 4, Subsection 1 statement that "any discrimination based on belonging to a national minority shall be prohibited" (Council of Europe 1995: 3), with the Council of Europe serving as a gateway to European Union, were very relevant to CEE countries. When Estonia and Latvia, postcommunist countries with the thorniest issues related to citizenship regulation, signed the Framework Convention, they explained who are to be considered national minorities in a way which excluded the Russian minority. For example, Latvia declared that only "*citizens* of Latvia

<…> who have *traditionally lived in Latvia for generations* and consider themselves to belong to the State and society of Latvia" can be considered as belonging to national minorities (see Council of Europe 2015) [italics are my emphasis – E.V.]. This should be interpreted as a political statement that only autochtonous minorities are worthy of protection, while Russians should be perceived as colonizers and thus undeserving of the same rights, first and foremost of access to citizenship, the main bone of contention between these Baltic states and their Russian minorities. These were not the only addendums: not only CEE countries like Poland, but also Western European countries like Austria, Germany, Luxembourg and Switzerland also added a statement that only citizens with long-lasting ties are to be considered under the title of national minorities (which should be interpreted as an attempt to distinguish migrant communities from autochtonous national minorities), Macedonia (FYROM) added a list of minorities which did not include Greeks, Malta declared that there are no national minorities in Malta and that they are signing only due to solidarity with other countries, while Azerbaijan and Bulgaria explicitly declared that signing this Convention does not give anyone a right to threaten the country's territorial integrity or internal and external security (Council of Europe 2015). Although even more extreme behaviour could be found in Western Europe, where France refused to ratify the Framework Convention due to the claim that there are no national minorities in France (Galbreath and McEvoy 2011: 77), it is important to note that postcommunist countries felt enough pressure to at least pay lip service to the hegemonic international norms of nondiscrimination, and yet searched for ways to prevent such norms from legitimizing colonizers or opening opportunities for challenges by potentially subversive minorities.

*4.1.2.4. The European Union.* The prospect of joining the European Union, which included fulfilling the expectations of the aforementioned two organizations, was from the start the key motivator of state behaviour in Central and Eastern Europe, and was expected to prompt convergence with EU policies and practices, including greater inclusiveness and nondiscrimination (e.g. Csergő and Goldgeier 2005; Henderson 1999; Maresceau 1997; Sadursky, Czarnota and Krygier 2006; Schimmelfennig and Sedelmeier 2005; Tasch 2010; Weidenfeld 1995). The key to these expectations was EU conditionality – tying membership prospects with fulfilling certain prerequisites. These prerequisites were formalized as Copenhagen conditions, named after the meeting of the European Council (heads of EU states) in Copenhagen in 1993:

> Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union (European Commission 1993).

The European Commission was tasked with monitoring and evaluating the progress of the candidate countries in pursuing these goals. Although all of these conditions required a lot of effort from the countries undergoing a double (political and economic) or even triple (stateness) transition, minority rights were the most contentious element from the point of view of the candidates (for a detailed overview of the accession process see Vassiliou (2007) or Sajdik and Schwarzinger (2008)). Yet in this area the EU essentially turned to the aforementioned two organizations for information and recommendations by relying on reports of the High Commissioner for National Minorities and meetings between EU commissioners and the High Commissioner for Human Rights of the Council of Europe

(de Beco 2012). The EU documents themselves do not refer to minorities. Maybe such references would have been seen as superfluous since they were already covered by the sister organizations, or perhaps such reticence was due to the Western European countries' long-standing issues with their own minorities, like Basques and Catalons in Spain or the irredentist Irish in the UK. Whatever the reason, the result is that the imperative of respect for minority rights is confined to accession requirements and thus applicable only to prospective members. Many scholars have questioned such imbalance and the lack of recourse for disciplining postcommunist countries once they become members (Cirtautas and Schimmelfennig 2010; Jutila 2009). Therefore, based on the principles of ideational analysis, if we want to argue that the Lithuanian case has been affected by the international norms of nondiscrimination, we need to find references to them made after the country has become a member.

The evaluation of minority rights situation in candidate countries in the European Commission progress reports appeared to matter, as evidenced by the refusal to include Latvia or Slovakia in the first wave of applicants who could begin official negotiations. However, even if we can accept that candidate countries had to follow the prescriptions of nondiscrimination due to membership conditionality, it is legitimate to question whether one could expect CEE countries to follow these prescriptions once this carrot/stick was removed. On the other hand, it would not be correct to say that there are no nondiscrimination norms in the EU itself. Despite a slow start, norms of nondiscrimination have been gaining traction in EU legislation, starting with the 1993 Stability Pact and 1997 Amsterdam Treaty, which in turn prompted the 2000 Racial Equality Directive (2000/43/EC) establishing nondiscrimination on the basis of characteristics like ethnic

origin as a mandatory norm for the EU countries. These developments were partly prompted by the prospects of enlargement and the fear of Eastern European xenophobia, but also aimed at supporting the free movement of persons, often stressed as the most fundamental freedom in the EU (Schiek 2002). Even in such assimilationist countries like France, the European imperative of nondiscrimination was explicitly invoked in the debates regarding the citizenship of the children of postcolonial migrants (Bertossi 2004). However, the main focus fell onto CEE countries.

Some authors are skeptical towards the notion that the "civic" West is leading the "ethnonationalist" East away from discriminatory impulses and highlight the inconsistent application of the minority rights standards to Eastern vs. Western Europe and even to different CEE countries, as well as question whether norms are relevant only insomuch as they were acceptable to domestic actors (Hughes et al. 2004; Jutila 2009; Kochenov 2008). Kochenov (2008) goes so far as to suggest that the EU completely ignored the treatment of the Russian minority in the Baltic states and supported assimilationist positions of Estonia and Latvia by funding state language courses.

Grabbe (2006: 202) notes that the effect of eurointegration on CEE policies "was great, but it was blunt rather than precise". The disentanglement of domestic factors and EU conditionality is particularly difficult. Grittersová (2013) points out that, when Slovakia was excluded from the first wave of EU (and NATO) applicants due to Mečiar's policies, he placed the blame on the domestic opposition for blackening their country internationally instead of acknowledging his policies as unacceptable, while Croatia, which had experienced an even stronger nationalist leadership under Tudjman, wavered in its commitment to pursue EU membership due to EU's ambivalence during the Yugoslav wars

and did not even make it into the second wave of applicants. The more subtle analysis has suggested that international norms do matter, but that conditionality has a stronger effect than normative pressure, and that domestic factors moderate the effects of the latter much more than of the former (Kelley 2006). However, I propose that, once membership is gained and conditionality is no longer an effective motivator, it is possible to isolate the ideational effects of EU norms into which the elites have been socialized to the point where they keep following EU prescriptions even without enforcement mechanisms (which are few and far in between in the EU and apply only to mandatory legislation like directives, which could not be applied to citizenship regulation as one of the last bastions not breached by supranationalism). As Ram (2012: 1193) points out, if EU norms would have been accepted due to purely rationalist incentive of EU membership, then we would expect countries to renege once membership has been achieved, and if that does not happen, we can hypothesize that the effect of norms at this point is ideational rather than interest-based.

Based on the process tracing logic, this means that if we can find references to international norms of nondiscrimination in the Lithuanian case despite the lack of enforceability that used to be available under candidacy conditions and under the conditions of extremely widespread domestic opposition, then we can conclude that norms do actually play a role in the outcome. Even if they are only a part of "EU-speak" and not fully internalized (Uysal 2013: 12), the very existence of such a phenomenon shows that EU prescriptions are considered legitimate and carry normative weight.

*4.1.3. Ideational research of constitutionalism and judicial review.*

The Constitutional Court of the Republic of Lithuania serves the function of constitutional judicial review, i.e. it judges how well legislative acts conform to the

principles laid out in the Constitution. Therefore, from the perspective of discursive institutionalism, the text of the Constitution is the locus of institutionalized norms which form the environment of the Court, and the rulings can be understood as the interactive locus where the discourse takes place. Both the text of the Constitution and of the rulings are subject to empirical analysis in this thesis.

*4.1.3.1. Constitutional judicial review.* Constitutionalism appears to be tailor-made for ideational research: indeed, norms do not get much more explicit than a written Constitution – a higher standard against which all other norms get judged. Judicial review is, at bottom, pure decision making based on norms, which makes it a stellar object of ideational analysis (cf. Berman 1998: 29, 32). Furthermore, Constitutions are especially conducive to inquiries related to issues of ethnic discrimination and identity, as they offer a way to achieve better analytical clarity and specification of such nebulous topics as collective identity (see Berman 2001: 238-239; Deets 2006; Rosenfeld 2010). However, the reach of scientifically sophisticated research on Constitutionalism does not go far beyond the establishment, spread, and empowerment of judicial review (see Ginsburg 2008; Graber 2005; Hilbink 2009; Hirschl 2006; 2008; 2009). In that sense, my research, which is more concerned with the specific ways ideas play in the actual workings of judicial review, contributes a building block to filling what Ginsburg (2008: 93) sees as an important gap in Constitutional research by providing a microstudy of judicial review that moves beyond speculative positing of transnational influences on Constitutional politics of identity and offers a concrete investigation of empirical evidence.

The body of ideational research on the workings of Constitutionalism that does exist does not offer a coherent set of hypotheses and is permeated by discordance between

those who claim to themselves the mantle of realists, and another side, labeled by the former as idealists. The importance of ideas and norms in Constitutionalism is emphasized in what Ginsburg (2008) terms the "demand-side" "rights hypothesis," which views judicial review as a result of societal pressures for better enforcement of rights. This approach is criticized for being underspecified and is counteracted by institutionalist accounts of judicial review as an attempt to resolve competition among different parts of government, turning it into judicial policy-making.

The type of Constitutional Courts that have been institutionalized throughout the postcommunist region appear to be about as isolated from external pressures as a political institution can be, but the aforementioned institutionalist accounts reveal a different story in the underlying logic of the operations of Constitutional judicial review. Graber (2005: 427-428, 443) suggests that the current research on judicial review is converging on a new paradigm which asserts that "judicial review does not serve to thwart or legitimate popular majorities; rather that practice alters the balance of power between the numerous political movements that struggle for power in a pluralist democracy," and that "justices have tended to support liberal results that limit state action or favor a secular elite, but they have abandoned lines of liberal activism that called for more state intervention on behalf of the powerless". He connects legislative deference to judiciary with disagreements within the ranks of elites (Graber 1993). In a similar vein, Epstein, Knight and Shvetsova (2001) discuss the Courts' potential to challenge the political leaders, but present an unproblematized view of its legitimacy in the eyes of a larger public.

Weiler (1995) claims that constitutionalization of values means taking them out of political bargaining. In contrast, Hirschl (2006) suggests such fundamental political issues

as the questions of collective identity get transposed into the judicial realm when there is a disonance between the values entrenched in the Constitution and those prevalent in the country‘s populace. I believe the Lithuanian case of dual citizenship allows us to take into account both approaches. The Constitution reflects the transposition of the conflict between civic and ethnic values, as it contains norms related both to the principle of nondiscrimination and undesirability of dual citizenship, and to the special relationship between the Lithuanian state and people of Lithuanian ethnic descent. However, the fact that both approaches are entrenched in the Constitution takes away the possibility to solve the dilemma through political means. Thus the level of judicial review becomes even more important for analyzing the ideational vicissitudes of dual citizenship.

Hirschl (2000) is sceptical of the analytical potential of the “rights doctrine” and, in a manner characteristic of anti-ideationalist skeptics, claims that ideational explanation can only be valid if it can demonstrate a self-defeating effect that is contrary to interests of pertinent stakeholders (Hirschl 2009: 825-830). Ignoring for now the anti-ideational bias of such claims, it suffices to say that my research can also be seen as a test of Hirschl‘s statements via exploring the actualization of such ideational disonance that produces a gridlock without tangible winners.

On a similarly skeptical note, Kelley (2006) argues that, when it comes to ethnic policy, transnationally informed socializing does not work if faced with strong domestic opposition, and membership conditionality matters much more. If we look at the research on Constitutional Courts in the postcommunist realm, we find authors such as Bugaric (2001) who argues that Constitutional Courts in postcommunist Europe are not active enough in the protection of human rights, but does the staunchly antidiscriminatory ruling

of the Lithuanian Constitutional Court provide evidence to the contrary? To bring it closer to home, Pettai (2003) discusses the ethnopolitical cases that the Constitutional Courts of Estonia and Latvia have had to face, and it becomes apparent that in all of them the Courts have been acutely aware of the tension between the *raison d'être* of newly independent states and the rights of nondiscrimination of ethnic minorities (both collectively and individually), and in most cases the rulings served the former while trying to placate the latter.

These Courts attempted to toe a narrow line, following the letter of the Constitution and emphasizing judicial technicalities, rather than questioning the fundamentally ethnonationalist orientation of these states. The question that logically follows is whether the Lithuanian ruling that allows dual citizenship "for no one rather than for everyone" is basically serving similar statist logic while paying lip service to the rights of minorities. Advancing an interests-based explanation becomes tricky in a situation where there appears to be no winners, but the stateness-based line of reasoning offers a way to zone in on those interests, thus providing an opening for the second prong of the dual approach to explaining citizenship regulation that I seek to flesh out in this dissertation.

*4.1.3.2. Intra-constitutional contradictions.* The importance of constitutionally institutionalized international human rights norms has been repeatedly invoked in cases of judicial review from Israel (Woods 2009) to Central and Eastern Europe (Scheppele 2000; 2003). However, as Leoussi (2007: 162 *passim*) points out, entrenchment of internationally recognized human rights in the body of a Constitution is only part of the story: attention should also be paid to the preambles of Constitutions, which in the postcommunist case

make the ethnonationalist underpinnings of these states very explicit.[56] Thus the Constitution itself includes contradictory norms, and the real issue centers around the choices that the Constitutional Court judges make to prioritize one set of norms above the other.

On the surface, we can observe Euro-integrational imperatives trumping the ethnonationalist statist concerns throughout the postcommunist region – even if an explicit constitutional norm that charges the state with taking responsibility for co-nationals living abroad is entrenched in the Constitution, it is often bypassed by state actors in fear of a Western backlash (see Deets 2006; Williams 2002). However, when we look at them more closely, such developments reveal the paradoxical dynamics induced by the interaction of conflicting ideational paradigms, part of which is a redefinition and adjustment of interests. As Kostakopoulou (2005: 236-237) observes in her study of European judicial review, "agents have the capacity to capitalise on the normative surplus of meaning and the progressive possibilities already present in accepted logics and existing conceptual resources nested within institutions in order to develop new conceptions, to construct and extend norms and to act in complex environments." My research uncovers precisely this kind of usage of the surplus of meaning brought about by the tensions that are wrought into Constitutions as über-norms, demonstrating the ubiquity of ideational struggles over a Constitution caught between a rock and a hard place, i.e. between the Euro-integrationist and ethnonationalist paradigms of political membership.

[56] The French judicial review experience abundantly demonstrates the enforceability of preambles; see e.g. Stone Sweet 2000. Also, see Deets 2006 and Přibaň 2004 for discussions on the inner tensions of postcommunist constitutions.

The case of recent politicization of citizenship in Lithuania, which has often been neglected in studies of citizenship, is interesting precisely because it offers insights into the vicissitudes of the normative and institutional overlap between "East" and "West." The role of EU membership conditionality in the politics of postcommunist countries has been extensively discussed, but the bulk of the research fails to analytically disentangle "genuine" normative socialization on the one hand, and strategic reasoning and action that breeds "constitutional cheerleading" and Janus-faced structures and discourses on the other (see Jacoby 1999). Is the Lithuanian case a case of what Laitin (2012: 56) calls "a greater motivation of those on the far periphery to assimilate into the norms of the centre"? Or is it a case of ethnonationalism in yet another disguise? More generally, is it an exception that only confirms the stereotypes about postcommunist Europe, or is it a harbinger of the fruit of the unprecedented marriage between the East and the West? I probe these questions via the exploration of the reasoning that led the same state elites who twenty years ago fought for and built Lithuanian independence to now become 'backstabbing traitors' in the eyes of a significant part of its population. The ideational research on the Euro-orientation of the postcommunist world has mostly focused on the role of neoliberal economic ideas (see Appel 2004; Darden 2009; Dawisha and Ganev 2005; Ganev 2005; Horowitz 2007). Meanwhile, as Dawisha and Ganev (2005) lament, scholars who focus on such ideationally centered topics as nationalism and other identitarian phenomena often fail to produce analytically adequate work. Process tracing of the reasoning exibited by the Constitutional Court helps avoid the trap of normativity and essentialism and investigate concrete ways in which ideas play a role in producing an outcome that flies in the face of both scientific predictions and lay expectations pertaining to the relationship between citizenship and

ethnonationalism. In that sense, this research speaks directly both to the contention that ideational research is *ad hoc* and merely correlational, and to the question of the actual effect of European integration on the domestic politics of postcommunist countries. In addition to measuring references to international norms, I test the prediction that conditionality should move the country in a more civic than ethnic direction by tracing whether one could observe a decline of the relevance of ethnonationalist values and an increase of the valence of civic values over time across the different rulings that touch upon the issues related to citizenship.

My research is based on the premise that the issue of the supposed beneficial normative effect of Euro-integration on postcommunist countries is more complex than a juxtaposition of international "norm-makers" and domestic "norm-takers" (Checkel 1999: 84). In the next part of this chapter, I hone in on how those dynamics are realized in a situation where the Constitution contains both the imperative of nondiscrimination *and* the underpinnings of national identity, and the key question concerns the conditions of possibility of intraconstitutional choices when both paradigms are made partially available, yet cannot reach an optimal equilibrium.

*4.2. The textual evidence in the Lithuanian case.*

In this part of the chapter, I recap the key characteristics of the textual background against which we can analyze the 2006 ruling of the Constitutional Court and which was discussed in more detail in Chapter 2 and proceed to conduct content analysis of the Constitutional Court rulings. The evidence on the motives and reasoning pertaining to dual citizenship and its relationship to ethnicity and to international norms was gathered by examining the records of the work of the drafters of the Constitution, the court proceedings

and the rulings pertaining to citizenship and ethnic minorities, and by interviewing the relevant actors and analyzing their written commentary in Lithuanian media and scholarly publications.[57]

*4.2.1. The ideational context of the 2006 Constitutional Court ruling.*

In Chapter 2 I presented the broader demographical and historical background of the questions of dual citizenship in Lithuania, pointing out its expected ethnic connotations. The Constitutional Court is supposed to be quite isolated from any such influences and only make decisions based on the letter and spirit of the Constitution and on the body of its own jurisprudence. Let us review both of these elements of the discursive context of the November 2006 ruling.

*4.2.1.1. Constitutional ambiguities.* In section 2.2.3., I analyzed the proceedings of the 1990-1992 parliamentary commission which drafted the Constitution adopted in October 1992. I demonstrated that the intimate relationship between citizenship and identity is evident in the proceedings of the Lithuanian Parliament related to both the Constitution and the Law on Citizenship, despite the apparent civic credentials of the initial 1989 Lithuanian Citizenship Law. For now let us recap the main characteristics of the Constitution which pertain to the matters of citizenship, such as the relative presence of international norms of nondiscrimination vs. particular conceptions of statehood.

[57] The documents of the drafting of the Constitution were accessed at the archives of the Parliament of the Republic of Lithuania and the documents of the proceedings of the Constitutional Court were accessed at the archives of the Constitutional Court of the Republic of Lithuania in August-September 2009 thanks to The Johns Hopkins University Leonard and Helen R. Stulman Jewish Studies Award for Pre-dissertation Research. The texts of rulings can be found on the website of the Constitutional Court of the Republic of Lithuania. I used the official English translations for quoting the rulings in this chapter, but conducted content analysis using the original texts of the rulings in Lithuanian, found at http://www.lrkt.lt/lt/teismo-aktai/nutarimai-isvados-ir-sprendimai/138/y2010, in order to capture all nuances of meaning that can be lost in translation. However, the supporting case materials and protocols of public deliberations can only be found in the archives.

The protocols of the drafters of the Constitution demonstrated a keen awareness of the possible alternative conceptions of Lithuania as a more ethnic or a more civic state, expressed by the question of how to define the nation (see e.g. the protocol of the meeting of the commission on February 3rd, 1992). Some proposals suggested a more ethnic term "Lithuanian nation" (such as the ones produced by diaspora representatives), while others, such as the left-wing opposition, argued in favour of a more civic notion of "the nation of Lithuania" and defined it as including representatives of traditional ethnic minorities (see section 2.2.3.1. for more details). The choice of the definition of the nation was said to matter mostly due to how it would be perceived by Western observers and national minorities whose loyalty to the Lithuanian state was not a given. Most of the members of the Commission subscribed to a more ethnonationalist conception of the nation. Even a staunch social democrat Vytenis Andriukaitis expressed concern with "ecological existence and continuity of the nation" (January 27, 1992) and stated that the nation is composed of "all people of ethnic Lithuanian origin" plus territorially relevant ethnic minorities (February 12, 1992). Those who called for a non-ethnic conception of the nation, like Egidijus Jarašiūnas or Kazimieras Motieka, also suggested to include not only citizens, but also "those who consider Lithuania to be their Homeland" (February 12, 1992), echoing the imperative to exclude disloyal colonizers similarly to the other Baltic states and to include the diaspora. In March 1992 the Commission was considering a civic definition of "the nation of Lithuania", and the Constitutional Court chose this fact as an argument supporting its 2006 ruling. However, the civic definition was ultimately not used in the final draft. The final preamble of the Constitution choses to use the ethnic term for the nation, but refrains from explicitly defining who exactly belongs to that nation:

> The Lithuanian Nation
>
> – having created the State of Lithuania many centuries ago,
> – having based its legal foundations on the Lithuanian Statutes and the Constitutions of the Republic of Lithuania,
> – having for centuries staunchly defended its freedom and independence,
> – having preserved its spirit, native language, writing, and customs,
> – embodying the innate right of the human being and the Nation to live and create freely in the land of their fathers and forefathers—in the independent State of Lithuania,
> – fostering national concord in the land of Lithuania,
> – striving for an open, just, and harmonious civil society and State under the rule of law,
> by the will of the citizens of the reborn State of Lithuania, adopts and proclaims this
> Constitution.[58]

It is evident from this preamble that the orientation towards statehood is clearly informed by ethnic sensibilities and a strong concern with historical claims of nationhood. The privileged position of Lithuanians in Lithuania is further affirmed by Articles 2 and 3 asserting the ultimate sovereignty of the Nation (in the protocol of the Constitutional Commission meeting on February 12, 1992, MP Jonas Liaučius proclaimed that "if we do not use the concept of the ethnic Lithuanian nation, we will have to give up the sovereignty of the nation"), Article 14 instituting Lithuanian as the state language, and Article 32 giving the right to any ethnic Lithuanian to come and settle in Lithuania. At the same time, Article 29 clearly instituted the norm of nondiscrimination, expressly forbidding both restrictions and privileges on discriminatory grounds. Thus the Constitution contains both norms that allow for an ethnic and a civic interpretation of the relationship between the Lithuanian state and its people.

58 The English translation of the Constitution of the Republic of Lithuania can be found at http://www3.lrs.lt/home/Konstitucija/Constitution.htm.

As we saw in the analysis of the public discourse in Chapter 3, in the eyes of the Lithuanian public and politicians, the ruling of the Constitutional Court effectively amounted to what Stone Sweet (2007: 916) has called "a judicial *coup d'état*" in that it challenged the intentions of the "founders" by denying the privileged position of Lithuanians in Lithuania. The documents of the Constitution drafting indeed suggest that some of the "founders" had ethnonational aspirations. It is possible that the choices made by the Constitutional Court have something to do with the fact that the member of the Constitutional Commission who proposed to use the civic notion of the "nation of Lithuania", Egidijus Jarašiūnas, was serving as an advisor to the Constitutional Court at the time of the deliberations on the 2006 ruling. It is important to keep in mind that Jarašiūnas held a minority position regarding parts of the draft of the Constitution as late as September 1992 (see Žilys 2013 for references to his repeated submission of alternative proposals of the draft distinct from the main body of the Constitutional Commission) – although the bulk of contention centered around the executive-legislative division of powers, a statement of the conception of the nation was part and parcel of any draft of the Constitution). Unfortunately, he refused to give an interview. In this case, we have to go looking for the "fingerprints" and see to what extent the text of the ruling explicitly appeals to the civic intentions of the founders vs. to what extent international norms or concerns with stateness are mentioned.

As Graber (2005: 429) notes, "legal hope for neutrality is a phantasm. Judicial decisions require contested value choices that cannot be logically deduced from purely legal standards." The crux of the question is precisely why the Constitutional Court, an institution as sheltered from external pressures as it is possible in politics, would choose to

emphasize the phrases that call for equal treatment of ethnicities rather than the ones that assert the 'Lithuanianness' of Lithuania. This question serves as the opening for claims of the role of the international human rights paradigm and of the "European" view of ethnicity as an unacceptably discriminatory criterion for citizenship. However, the close analysis of the textual evidence reveals there are more sides to the story.

*4.2.1.2. Citizenship and ethnicity in the rulings of the Constitutional Court.* There are five main rulings passed by the Constitutional Court in which the issues pertaining to citizenship and/or ethnic discrimination are at the center of attention. They include the April 1994 ruling regarding citizenship of Red Army officers, the November 1998 ruling on prohibition of multiple citizenship for political candidates standing in elections, the December 2003 ruling on the Presidential power to grant citizenship by decree, the May 2006 ruling on the use of state language on referendum ballots, and the November 2006 ruling on Lithuanian dual citizenship legislation, which is the main object of interest in this thesis and which was informed by the contents of the preceding four rulings.

Most of these rulings were initiated by petitions from members of the Parliament (MPs), harkening back to what we discussed in the preceding sections on the conflicts among the political elites which are deferred to judicial review due to the impossibility of reaching a compromise politically. Furthermore, most of them explicitly touch upon the issue of dual citizenship, lending support to my suggestion that citizenship is in essence a boundary maintenance regime, and that a large part of that maintenance take place at the site of dual citizenship (another site being naturalization requirements). Let us review these rulings that, taken together, present the Constitutional doctrine on citizenship in Lithuania,

and see whether it is possible to trace changes in the relative prioritizing of international norms and nondiscrimination vs. stateness concerns over time.

*4.2.1.2.1. Ruling on the eligibility of Red Army officers for Lithuanian citizenship, April 13, 1994.*[59] The first formulation of the position of the Constitutional Court on the question of citizenship was the April 13, 1994, ruling "On the compliance of the Resolution of the Seimas of the Republic of Lithuania "On Amending Item 5 of the Resolution of the Supreme Council of the Republic of Lithuania 'On the Procedure for Implementing the Republic of Lithuania's Law on Citizenship'" of 22 December 1993 with the Constitution of the Republic of Lithuania". The case was initiated by a group of mostly opposition MPs represented by a right-wing politician Vilija Aleknaitė-Abramikienė and a former member of the Constitutional Commission Egidijus Jarašiūnas. The plaintiffs questioned the resolution of the Parliament to accept that those officers of the Red Army who resigned from Soviet service and who gained Lithuanian identification documents can be accepted to be Lithuanian citizens. The petitioners (mostly MPs elected under the banner of the independence movement Sąjūdis) argued that the zero option of Lithuanian citizenship is dependent on the person's repudiation of any other citizenship, whereas Soviet officers certainly carried Soviet citizenship and thus should be considered ineligible for Lithuanian citizenship unless proven otherwise. They also pointed out that Red Army officers had no choice in deciding their place of residence and went where the Soviet Union sent them, so they could not be considered to really have chosen allegiance to Lithuania.

[59] All quotes in this section are from Constitutional Court of the Republic of Lithuania. 1994. Ruling "On the Compliance of the Seimas of the Republic of Lithuania Resolution "On Amending Item 5 of the Resolution of the Supreme Council of the Republic of Lithuania 'On the Procedure for Implementing the Republic of Lithuania Law on Citizenship', adopted on 22 December 1993, with the Constitution of the Republic of Lithuania." Case No. 7/94. Vilnius, 13 April 1994, unless indicated otherwise.

The Constitutional Court agreed with the petitioners and responded by emphasizing that those who came to Lithuania from the territories of the USSR during the occupation were "immigrants (settlers)" who in essence became foreigners after the declaration of independence and thus should go through the process of naturalization accordingly. This was the first strong pronouncement of the primacy of stateness concerns in Lithuanian citizenship regulation and the designation of the part of the Russian minority who came to Lithuania under official capacity of serving the Soviet Union as colonizers who do not belong there. The Court postulated a restrictive understanding of citizenship:

> Citizenship is a permanent political-legal relationship of a person with a specific state, based on mutual rights and duties as well as trust, loyalty and protection. Laws on citizenship adopted by states precisely regulate conditions and procedure for acquiring citizenship, providing for the oath to the state and pledge of loyalty (with exception of cases when citizenship is acquired by birth), forbidding or strictly limiting dual citizenship.

The Court pointed out that Article 12 entails a general prohibition of dual citizenship except in individual cases provided by law, and that the only people who are allowed to hold dual citizenship are those who were citizens of Lithuania before June 15, 1940 (before Soviet occupation), and their descendants, which certainly excludes recent immigrants from Russia or other parts of the USSR. Keeping in mind the contents of the 2006 ruling, it is interesting to note that in 1994 the Court explicitly stated that the existence of different groups of persons in citizenship regulation is "obvious" and consequently requires different procedures of granting citizenship. The only group that was guaranteed Lithuanian citizenship consisted of interwar Lithuanian permanent residents and their descendants. The next hierarchical level was occupied by those who were born in Lithuania – they automatically gained Lithuanian citizenship if they did not hold citizenship of another state, then came those who have a permanent residence and legal means of income

(both of which do not cover service in the Red Army) – they had to declare their choice in the "zero option", and on the lowest hierarchical level we find those who gain citizenship through naturalization or by way of exception. In an interesting twist of perspective, the only area in which the Constitutional Court invoked antidiscrimination norms was privileges granted to Soviet army officers by the USSR, such as their exemption from mandatory registration which restricted freedom of movement within Soviet Union and which incidentally served as the basis of determining permanent residence for the purposes of determining eligibility for Lithuanian citizenship. Ultimately, only those Soviet army officers who could claim pre-war Lithuanian roots were allowed to gain Lithuanian citizenship.

Overall, stateness concerns occupy a central place in the April 1994 ruling, Meanwhile, there are only a few references to anything international in this ruling, among them the aforementioned quote on general strictness of dual citizenship availability and the statement that "it should be noted that the fact of the 1940 annexation and occupation of Lithuania was recognised by many states of the world", invoked in support of treating the presence of Red Army officers as "illegal stationing of the occupation army on the territory of another state". Another interesting twist on invoking international norms can be seen in the way the Constitutional Court interprets the implications of the 1949 Geneva Convention:

> The provisions of Item 5 of the Republic of Lithuania's Law on Citizenship of 10 December 1991 are in compliance with the main principles of international law. In Article 49 of the 12 August 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War it is promulgated (declared) that deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited. Therefore, if such limitations are imposed with regard to civil residents

> (civilians), it is inappropriate even to talk about the right of servicemen of the occupation army and officials of other repressive structures to citizenship of the occupied state.

In conclusion, the concern with stateness rooted in interwar Lithuanian republic is very strongly pronounced throughout this ruling, whereas international norms are relevant only insofar as they serve the interests of stateness.

*4.2.1.2.2. Ruling on multiple citizenship of election candidates, November 11, 1998.*[60] The next ruling in which questions of citizenship played a central role was the November 11, 1998, ruling "On the compliance of Part 4 of Article 38 of the Republic of Lithuania Law on Elections to the Seimas and Part 4 of Article 36 of the Republic of Lithuania Law on Elections to Local Government Councils with the Constitution of the Republic of Lithuania." The Law on Elections requires those candidates who hold dual citizenship to provide written proof of repudiation of any oath given as a citizen to another state. The case was initiated due to the fact that a prominent Lithuanian-American public figure Liucija Baškauskaitė was denied a possibility to stand as a candidate in elections due to the fact that she held both a citizenship of Lithuania and of the United States of America, unless she forsake American citizenship – a condition unlikely to be fulfilled. Thus this ruling is especially interesting, because it was initiated by a member of the Lithuanian diaspora rather than of a national minority. Formally the petition was filed by a group of the members of the Parliament, but the eclectic list of signatures from a rainbow of political parties, as well as the designation of a private lawyer as the representative of the plaintiffs, indicates that this was a personal quest by the jilted candidate to address what

[60] All quotes in this subsection are from Constitutional Court of the Republic of Lithuania. 1998. Ruling "On the compliance of Part 4 of Article 38 of the Republic of Lithuania Law on Elections to the Seimas and Part 4 of Article 36 of the Republic of Lithuania Law on Elections to Local Government Councils with the Constitution of the Republic of Lithuania." Case No. 17/97. Vilnius, 11 November 1998, unless indicated otherwise.

she claimed to be an instance of discrimination which prevented her from fully exercising her political rights. The petition claimed that a holistic interpretation of the Constitution should allow dual citizens to stand for elections and invoked the European Convention of Human Rights to support the charges of discrimination.

The Constitutional Court responded by affirming the requirement to repudiate any oath to another country if one wants to compete in elections and reiterating its restrictive stance on citizenship:

> Citizenship is a permanent political and legal link with a concrete state, which is based on mutual rights and obligations, and, as the result of the latter, on mutual confidence, protection and individual's loyalty to the respective state. <…>. In the institution of citizenship an oath is most often used when citizenship is granted by way of naturalisation: a person applying for citizenship pledges solemnly to observe the Constitution and laws of the respective state, to protect that state in case of need and perform other civil duties, to respect the customs and culture of that state etc. Thus, doubtless to say, an oath of a citizen is a political obligation of a particular person to the state which grants its citizenship to the person in the first place. <> only the persons who are loyal to that state and regarding their loyalty or credibility no doubts arise may work in its institutions.

It is interesting to note how the contents of citizenship identified by the Constitutional Court includes not only upholding the Constitution and other laws of one's state and performing necessary civil duties, but also mention respect for the customs and culture of that state. Combined with the political nature of these obligations and a strict emphasis on loyalty to the state, such enumeration could lead us to interpret that the Constitutional Court upholds a more thick and identity-related conception of citizenship. The ruling explicitly states that the very fact of possession of another state's citizenship is equivalent to political duty and loyalty to that state, which in the case of Lithuania dovetails with the historically informed distrust of the members of national minorities whose kin-

states have at some point in history threatened Lithuania, which makes dual loyalties a zero-sum game.

International references in this ruling also are invoked to cater to the restrictive approach to citizenship:

> <…> the legal doctrine also emphasises general tendencies of regulation of some relations of citizenship: universal recognition of acquisition of citizenship in cases when an individual is born in a family of citizens; establishment of special conditions for acquisition of citizenship by naturalisation; restriction of double citizenship in greater or smaller extent. In addition, it is underlined that all issues connected with citizenship, especially those of acquisition and loss of citizenship, are regulated by the laws of every particular state. The influence of international law on the institution of citizenship becomes evident only when bilateral international agreements are concluded concerning citizenship issues or corresponding international conventions are joined. Most often by bilateral international agreements one attempts to solve the problems which arise due to double citizenship.

As we can see, the Court reiterates its position that dual citizenship is to be avoided and that domestic stateness concerns take precedence over international norms when it comes to citizenship regulation, yet at the same time refers to the international dimension in its attempts to portray restrictiveness as the norm. Such subversive use of international norms for the purposes of stateness continues into the November 2006 ruling and helps explain its outcome.

It is important to note that the 1998 ruling is the first time when European Union is explicitly mentioned by the Constitutional Court in relation to citizenship:

> By the way, European Union directives urge that the other member states should not hinder the citizens of other states belonging to the European Union and who reside in other states to participate in local government elections. Thus, the practice of local elections is varied, however they are ultimately regulated by domestic laws.

It is symptomatic that this mentioning of the EU is greeted with the reaffirmation of the primacy of domestic legislation. The Court firmly concludes that the requirement to repudiate any other citizenship if one wants to run for elections in Lithuania does not violate any constitutional or even international norms.

This ruling also contains the most clear statement of the position of the Constitutional Court on the issue of discrimination and the meaning of Article 29 of the Constitution which prohibits discriminating or granting privileges:

> The principle of equality of persons which is established by Article 29 of the Constitution means, in essence, prohibition of discrimination. Discrimination is most often understood as restriction of the rights of an individual or granting certain privileges according to his or her sex, race, nationality, language, origin, social status, religion, convictions, or opinions. However, differentiated legal regulation when it is applied to certain groups of persons which are distinguished by the same signs, and in case one strives for positive and socially meaningful goals, is not regarded as discrimination. Special requirements or certain conditions when their establishment is linked with peculiarities of the regulated relations are not attributed to discriminatory restrictions either. For example, laws provide for certain requirements of education, qualifications, health or work experience as regards citizens who enter the civil service. Taking account of the peculiarities of performance and responsibility in state institutions, such requirements are considered natural and indispensable and they are applied in all states, therefore in such cases there never arise questions as for the violation or restriction of the right of citizens to participate in the government of their country.

It appears that in 1998 the Court did not yet have any issues with differential treatment of different groups of persons when it comes to citizenship regulation and did not treat it as discrimination. This stands in contrast with the November 2006 where dual citizenship for ethnic Lithuanians was judged to be discriminatory.

*4.2.1.2.3. The ruling on granting citizenship by way of exception, December 30, 2003.*[61] The December 30, 2003, ruling "On the Compliance of President of the Republic of Lithuania Decree No. 40 "On Granting Citizenship of the Republic Lithuania by Way of Exception" of 11 April 2003 to the Extent that it Provides that Citizenship of the Republic Lithuania Is Granted to Jurij Borisov by Way of Exception with the Constitution of the Republic of Lithuania and Paragraph 1 of Article 16 of the Republic of Lithuania Law on Citizenship" is especially controversial. Although this ruling nominally addresses the abuse of presidential power of granting citizenship by way of exception which should be based on that person's merits to Lithuania, as established in Article 16 of the 2003 Law on Citizenship, the petition was filed by Lithuanian political elites looking for a way to legally oust Rolandas Paksas, then President of Lithuania, who was perceived as weak and compromised by Russian interests. The Constitutional Court agreed with the petitioners and ruled that Paksas did breach the oath "to be faithful to the Republic of Lithuania and the Constitution, to conscientiously fulfill the duties of his office, and to be equally just to all" which he had given at inauguration by way of granting citizenship to his Russian supporter Jurij Borisov who had previously lost his Lithuanian citizenship (gained under dubious circumstances in the first place, as he was a Red Army officer) due to gaining Russian citizenship. After the presidential decree Borisov effectively had both a Lithuanian and a Russian citizenship – the anathema of the routine Lithuanian citizenship policy. There are some people who hold this combination of citizenships due to their contributions

[61] All quotes in this subsection are from Constitutional Court of the Republic of Lithuania. 2003. Ruling "On the Compliance of President of the Republic of Lithuania Decree No. 40 "On Granting Citizenship of the Republic Lithuania by Way of Exception" of 11 April 2003 to the Extent that it Provides that Citizenship of the Republic Lithuania Is Granted to Jurij Borisov by Way of Exception with the Constitution of the Republic of Lithuania and Paragraph 1 of Article 16 of the Republic of Lithuania Law on Citizenship." Case No. 40/03. Vilnius, 30 December 2003, unless indicated otherwise.

to Lithuanian culture, arts, etc., but Borisov's contributions were material and considered dubious – as the Constitutional Court pointed out, "in the sense of the Law on Citizenship, the person must be with merits not to any subject but the State of Lithuania itself", which could not be demonstrated in Borisov's case. A large part of the accusations also related to not following the appropriate procedures to the letter at various point in time during the Borisov saga, etc., making this ruling the longest by far among all those analyzed in this thesis.

Ultimately, Paksas was accused of granting Lithuanian citizenship by way of exception only because of his support in the electoral campaign instead of upholding Lithuania's interests. The hearings of a parliamentary commission were televised and basically took the form of a public trial, where the standing President was prosecuted by MPs from the whole partisan spectrum and defended by the most notorious and expensive lawyers. The Constitutional Court ruling was used as a basis for his impeachment by the Parliament, the first such instance in the postcommunist world which highlighted the division between the "winners" and "losers" of the postcommunist transition and elevated Paksas into martyrdom in the eyes of a part of the population disillusioned by the Lithuanian political establishment (see Clark and Verseckaite 2005 for more detailed analysis). He was not only removed as a president, but also forbidden to take up any office that would require giving an oath to the Lithuanian state. Paksas is still fighting this prohibition and has found a political niche as a member of the European Parliament, since that position does not require an oath to Lithuania.

However, it is possible to bracket the political exigencies while analyzing this ruling and to distill its most important points related to citizenship doctrine. A lot of the

text is devoted to the discussion of what can be considered merits to Lithuania. Since granting citizenship by way of exception is usually confined to prominent artists and athletes and does not affect the rules of citizenship loss or acquisition for the general public, I focus on what the 2003 ruling says in terms of the more general constitutional citizenship doctrine. However, it is quite illuminating that the Constitutional Court denies the merit of material contributions and claims that the label of merit is applicable only to a person who "very significantly contributes to strengthening of Lithuanian statehood, to the increase of the power of Lithuania and its authority in the international community, when it is evident that the person has already integrated into the Lithuanian society".

In this ruling, the Constitutional Court reiterated the restrictive conception of citizenship set out in the 1994 ruling and emphasized that "citizenship expresses legal membership of the person in the state, reflects legal belongingness of the person to the nation as a community organised into a state (state community)". It also repeated the pattern of appealing to the international norms on citizenship regulation, this time expanding more on them by stating that "citizenship legal regulation established by laws and concluded international treaties must ensure the implementation of the human right to citizenship, must be in line with international covenants, international customary law and generally recognised legal principles related with citizenship", but ultimately emphasizing the internationally recognized norm of the primacy and discretion of a state in regulating citizenship. The Court also reiterated its emphasis on the general prohibition of dual citizenship; however, it went much further in making that statement than in earlier rulings:

> It should be underlined that the provision of Article 12 of the Constitution that a person may be a citizen of the Republic of Lithuania and, at the same time, a citizen of another state only in individual cases established by law, means that such cases established

> by law can be very rare (individual), that cases of double citizenship must be extraordinarily rare, exceptional, that under the Constitution it is not permitted to establish any such legal regulation under which cases of double citizenship would be not extraordinarily rare exceptions, but a widespread phenomenon. Under the Constitution, expansive construction of the provisions of the Law on Citizenship consolidating an opportunity to be a citizen of the Republic of Lithuania and a citizen of another state at the same time is impermissible, under which double citizenship would be not individual, extraordinarily rare exceptions, but a widespread phenomenon.

Such a forceful statement was an admonition to the legislators who had just passed the new 2003 Citizenship Law which had expanded the possibilities for new generation emigrants to gain Lithuanian citizenship, as noted by the then-chairman of the Constitutional Court (cited in Maksimaitytė 2007). Basically, in this ruling, the Constitutional Court set the stage for the November 2006 ruling by reinforcing the previously established restrictive imperatives in its Constitutional doctrine.

The 2003 ruling also starts bringing in additional elements that heretofore had not been prominent in the Constitutional doctrine on citizenship. First of all, it appeared to supplement the political conception of citizenship evident in the 1994 and 1998 rulings with a reinforced legalistic dimension:

> Citizenship is not any permanent link between the person and the state, but it is a legal link. Citizenship relations are always legal ones, and their presence is always stated in a legal form. Only state institutions can decide citizenship issues, and, when doing so, they can perform only such actions that are provided for in the Constitution, laws and other legal acts. The state of citizenship could be changed only in case there exist grounds established in legal acts and only after the parties, the citizen and the state, have performed certain legal actions and upon adoption of a corresponding legal decision by the state institution.

Such emphasis on the legality of everything related to citizenship makes sense in the context of the 2003 ruling where the challenge lay in the subtleties of application of various legal provisions and the interpretation of every facet of many actions by the

President and his officials. However, the result of such strong statement of a legalistic doctrine of citizenship had a long lasting impact in foreclosing the space of interpretation available for the November 2006 ruling analyzed in this dissertation. Furthermore, the Court devoted an entire section to complain about how the power to grant citizenship by way of exception has been employed "in a legally deficient manner, without taking into account of the essence and nature of citizenship of the Republic of Lithuania enshrined in the Constitution". The Court finished the section of complaints by stating that:

> The Constitutional Court emphasises that such conception of Article 16 of the Law on Citizenship, which had been in practice until now, distorts the institute of citizenship of the Republic of Lithuania established in the Constitution and virtually devalues citizenship of the Republic of Lithuania, denies its nature and meaning.

The Court had to spend a large amount of time justifying its right to pass judgment on the President's behaviour as it pertains to his oath in this case, which helps understand the unusually activist stance that the Court adopts in this ruling. This kind of going beyond the letter of the petition to which the ruling is supposed to respond set the precedent for the judicial activism witnessed in the November 2006 ruling and its aftermath.

Another new development in the 2003 ruling is the first instance where the Constitutional Court explicitly claims that the concept of the Nation which is sovereign in the Lithuanian state actually refers to a civic (poorly translated in the English version as "civil") nation – a body of citizens, a state community. Again, perhaps one could venture to say that such a statement has something to do with the presence of Egidijus Jarašiūnas, the member of the Constitutional Commission who championed the notion of the Nation of Lithuania, who now was a judge of the Constitutional Court, but since it is impossible to get that kind of a "smoking gun" confirmation, we are forced to rely on what the text indicates. Despite the subscription to the term of the civic nation, the Constitutional Court

seems to continue the emphasis on a thick and historically rooted content of what it means to be a citizen, as evidenced in its recounting of what naturalization entails:

> It is possible to acquire citizenship by way of naturalisation, i.e. citizenship is granted to a person who meets the conditions established in the law. As a rule, such conditions are requirements of permanent residence in the state for a certain time period established in the law, and of knowledge of the state language. These requirements are based on the provision that the person wishing to acquire citizenship and the state must be connected by a permanent factual link before citizenship is granted, that permanent residence in the state during a certain time period established in the law and knowledge of the state language are necessary pre-conditions for a foreigner or a stateless person to integrate himself into the society, to perceive the mentality of the Nation and its strivings, the Constitutional order of the state, to get acquainted with the history, culture, customs and traditions of the Nation and the state, to be prepared to take responsibility for the present and the future of the state. It is due to this that it is not sufficient for a citizen of a foreign state or a stateless person who wishes to acquire citizenship merely to settle in this country — for this reason one has to reside permanently in the state for a longer time period, which is established in the law, and to know the state language.

A strong emphasis on mastery of the state language foreshadows the next ruling which touched upon the questions of ethnonationalist character of the Lithuanian state – the May 2006 ruling on the use of state language in voting ballots. In rounding up the analysis of the December 2003 ruling, we are forced to conclude that it was the most comprehensive statement of the Lithuanian constitutional citizenship doctrine, which perhaps got overshadowed by the focus on the scandal of the impeachment of the President, which is part of the reason why the November 2006 ruling was such a shock to the public and politicians alike. However, before me move on to the analysis of the key ruling on dual citizenship, we need to explore one last ruling which set its discursive context – the ruling on the use of state language.

*4.2.1.2.4. Ruling on the use of state language in voting ballots, May 10, 2006.*[62] The May 10, 2006, ruling "On the Compliance of Paragraph 6 (Wording of 10 April 2003) of Article 3 of the Republic of Lithuania Law on the Central Electoral Commission with the Constitution of the Republic of Lithuania" was another instance of one part of political elites challenging another, although it was less similar to the 2003 interinstitutional challenge and more in line with the setup of the 1994 ruling where right-wing politicians sought to enlist the authority of the Constitutional Court in their quest to prevent the left's attempts at relaxation of restrictive measures. 30 right-wing MPs, an interesting mix of conservatives, liberals and populists, addressed the Constitutional Court with a request to strike down the provision that referendum voting ballots can be printed not only in Lithuanian, but also in the language of a concentrated national minority in its region, which was instituted by the left-wing government in preparation for the referendum on EU membership. The plaintiffs argued that such provision contradicts two articles of the Constitution: Article 14 establishing Lithuanian as the state language, and, surprisingly, Article 29 establishing the norm of nondiscrimination. They claimed that the clause of geographical concentration of minority is discriminatory in that it gives extra privileges to Russians and Poles living in more concentrated communities, but discriminates against representatives of more dispersed national minorities.

This ruling is not about citizenship per se, but it helps us gauge whether the Constitutional Court sides with the more civic or more ethnic conception of the nation. Language is an especially interesting element of the civic-ethnic divide. On the one hand,

[62] All quoting in this section is from Constitutional Court of the Republic of Lithuania. 2006. Ruling "On the Compliance of Paragraph 6 (Wording of 10 April 2003) of Article 3 of the Republic of Lithuania Law on the Central Electoral Commission with the Constitution of the Republic of Lithuania." Case No. 25/03. Vilnius, 10 May 2006, unless indicated otherwise.

both scholars and practitioners argue that mandating a state language is not ethnic, but rather civic policy, since it is geared towards enabling deliberative democracy and does not require one to give up other languages. However, others point out that the very requirement of a certain level of proficiency in the official state language already puts members of national minorities at a disadvantage, from symbolic underrepresentation in the public sphere to limited employment opportunities exacerbated by the need to invest additional resources into learning the state language. When people in countries like the USA, which one would be hard pressed to deem ethnonationalist, rally around the English language as a marker of national identity and the boundary that demarcates "us" and "others" (in their case Spanish) (Zollberg and Long 1999), the civic status of a state language becomes a question rather than an axiom. What the Lithuanian Constitutional Court says about language bears reflecting upon:

> <…> the Lithuanian language, as the state language, is the means of public expression and internal communication of state and municipal institutions as well as communication with members of the community. It is an important element of the statehood, a factor uniting all citizens of the Republic of Lithuania, integrating the state community—the civil Nation—because it ensures equal opportunities for all citizens of the state to participate in the governance of their country, to make decisions of national importance, also the right to enter on equal terms in the state service. The knowledge of the state language is a prerequisite and a necessary condition for full-fledged participation of the citizens in the governance of the state. <…> It is impossible to deny the fact that a citizen of the Republic of Lithuania who does not know the state language has not fully integrated into the society of Lithuania.

Here we again see that the Constitutional Court adopts a civic stance by appealing to the notion of the civic nation and attributing the state language with an integrative power for the purpose of deliberative democracy. However, proclaiming that Lithuanian language is an important element of statehood inevitably points out that the state is created on the

basis of ethnic Lithuanians, and the claim that it is both a prerequisite and a necessary condition for full political participation designates those who have not mastered the state language as a type of second class citizens. In fact, the Court explicitly states that those who do not learn the language without being objectively unable to do so "lack public spirit" and should not be artificially prompted to participate in governance of the state community that s/he does not fully belong to and make nationally significant decisions. It goes so far as to say that if a person does not know enough state language to grasp a simple formulation of a referendum question that requires only a yes/no answer, then it is highly doubtful that this person "is capable of understanding the goals of the Nation and is ready to undertake the responsibility for the presence and future of the State of Lithuania".

The majority of such people are precisely the Polish and Russians living in geographically concentrated communities. Due to mandatory Russian language instruction during the Soviet occupation and to the fact that Polish language media was the closest available material that underwent less censorship than what was available in the USSR itself, most Lithuanians, especially in those regions where the minorities are concentrated, can understand these languages. Conversely, the Slavic minorities can understand some Lithuanian even if they do not speak it, so in social situations like shopping or going to a doctor's office the representatives of minorities can get by without speaking Lithuanian. However, politically these people are extremely isolated and routinely vote for the same handful of co-ethnic politicians who hold a virtual monopoly over the governance in municipalities where there is a greater concentration of minorities, so the Court's appeal to the integrative power of the state language is not without grounds. This isolationism, perceived by the general Lithuanian public as former colonizers' refusal to learn the state

language inseparable from a refusal to accept the end of colonization, serves to maintain an undercurrent of ethnic tension, exacerbated by the attempts of the minorities to affix place names and street signs in the bastardized mix of Polish-Russian-Belorussian that they appear to speak, and by the disparity between Polish minority rights in Lithuania and Lithuanian minority rights in Poland. The Court may be actively promoting a civic state, but its conception still requires certain sacrifices from the perspective of national minorities, as it claims that those who are not sufficiently integrated (meaning do not have sufficient knowledge of the Lithuanian language) are not full members of the Nation.

The Constitutional Court is very explicit about its active stance on the side of the civic rather than ethnic conception of the nation. It quotes its own December 30, 2003, ruling, and adds that "the Lithuanian civil Nation includes all citizens of the Republic of Lithuania, regardless of the fact whether they belong to the nominal Nation (they are Lithuanians), or to national minorities". However, it also insists that using more than just the state language in official capacity would deviate from the concept of the state community as a civic nation and says that only those who are fully integrated (i.e. have learned the state language) can be considered to be full members of the state community – the civic Nation. Furthermore, the Court points out that state support for minority cultures and languages does not mean that they can oppose the common interests of the state and Nation of Lithuania.

The court also pays lip service to the issue of international norms, once again affirming that the requirement to only use the state language in voting ballots does not violate international treaties and respects "universally accepted principles of international law". However, having relatively forcefully established the imperative of the monopoly of

the state language in the public sphere, the Court refused to even consider the second part of the petition – the discrimination charge. Therefore, the interpretation of the May 2006 ruling as either civic or ethnic cannot be unequivocal. The language of this ruling suggests that we do indeed see a movement from a more ethnic to a more civic stance in the Constitutional Court rulings, but it is important to measure the tendencies more precisely, which I execute in section 4.2.3. Let us recap the key points of the Lithuanian Constitutional doctrine on citizenship and proceed to analyze the November 2006 ruling in that context.

*4.2.1.2.5. Interim conclusions: Constitutional doctrine on Lithuanian citizenship.* Having overviewed the rulings pertaining to citizenship, we have to conclude that the Constitutional Court has been explicit in invoking the imperatives of independent statehood and connecting them with the historical record of restrictiveness in all rulings that touched upon the issue of citizenship. This historically informed stance is what gave basis for the Constitutional Court to strike down the possibility for Soviet army officers serving in the Red Army, which was seen as a foreign aggressor, stationed in Lithuania, to gain Lithuanian citizenship[63], as well as for its negative evaluation of the practices of granting dual citizenship through Presidential decrees, epitomized in the 2003 case relating to the President charged with ties to Russia[64]. In the latter ruling, the Constitutional Court presents a condensed version of its understanding of citizenship:

[63] Constitutional Court of the Republic of Lithuania. 1994. Ruling "On the Compliance of the Seimas of the Republic of Lithuania Resolution "On Amending Item 5 of the Resolution of the Supreme Council of the Republic of Lithuania 'On the Procedure for Implementing the Republic of Lithuania Law on Citizenship', adopted on 22 December 1993, with the Constitution of the Republic of Lithuania." Case No. 7/94. Vilnius, 13 April 1994.

[64] Constitutional Court of the Republic of Lithuania. 2003. Ruling "On the Compliance of President of the Republic of Lithuania Decree No. 40 "On Granting Citizenship of the Republic Lithuania by Way of Exception" of 11 April 2003 to the Extent that it Provides that Citizenship of the Republic Lithuania Is Granted to Jurij Borisov by Way of Exception with the Constitution of the Republic of Lithuania and

> "Without its citizens, the state cannot exist. Citizenship is an attribute of the state. Citizenship is not a mere formal legal category, it is inseparably linked with the issues of sovereignty of the nation and the state, of national identity and rights and freedoms of the person. As a rule, citizenship is perceived as a permanent legal link between the person and the state.
>
> In its ruling of 13 April 1994, the Constitutional Court defined citizenship as follows: citizenship is a person's permanent political legal relation to a certain state, grounded on mutual rights and obligations as well as mutual trust, loyalty and protection therefrom.
>
> It needs to be noted that the conception of citizenship as a legal link between the person and the state is also consolidated in the 1997 European Convention on Nationality (Article 2)."[65]

These paragraphs allow us to discern certain cornerstones of the constitutional doctrine of citizenship, namely, the primacy of the state in the relationship of citizenship ("citizenship is an attribute of the state"), the imbrications of the issue of citizenship and national sovereignty and identity, and the inseparability of rights and obligations of a citizen with a premium on trust and loyalty. The reference to international norms is there, but comes as an afterthought. Overall, the body of jurisprudence on the issues of citizenship seems to be much more concerned with the nation-state than with international norms. How then did the 2006 ruling end up repudiating a large part of said nation by cutting off dual citizenship availability for Lithuanian emigrants?

*4.2.2. The 2006 ruling on dual citizenship.*

In the previous chapter (section 3.1) I presented the key elements of the November 13, 2006, ruling "On the Compliance of the Provisions of Legal Acts Regulating the Citizenship Relations with the Constitution of the Republic of Lithuania"[66] and discussed

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Paragraph 1 of Article 16 of the Republic of Lithuania Law on Citizenship." Case No. 40/03. Vilnius, 30 December 2003.

[65] 2003 December 30 ruling "On a decree of the President of the Republic".

[66] Constitutional Court of the Republic of Lithuania. 2006. Ruling "On the Compliance of the Provisions of Legal Acts Regulating the Citizenship Relations with the Constitution of the Republic of Lithuania." Case No. 45/03-36/04. Vilnius, 13 November 2006.

its repercussions in the public discourse. In this subsection I take a look at the ruling in light of the "intentions of the founders" and the development of the Lithuanian Constitutional doctrine on citizenship presented in the preceding section (4.2.1.). Then I proceed to conduct content analysis of all five rulings in order to measure the temporal trends in civic vs. ethnic orientation and international norms vs. stateness concerns. Taking into account all the "hoops" we have jumped through and "smoking guns" we have gathered, I attempt to explicate the puzzling decision to cut off dual citizenship possibilities for Lithuanian emigrants.

*4.2.2.1. The key features of the November 2006 ruling.* The main object of the petition which initiated the November 2006 ruling was a charge that the repatriation clause prohibiting dual citizenship for members of ethnic minorities who had emigrated to their kin-states required inquiry into a person's ethnicity and thus was noncompliant with Article 29 of the Constitution which prohibited discrimination or privileges based on descent. The Court ruled that the repatriation clause was indeed discriminatory, thus disappointing the politicians wanting to employ ethnic differentiation as a part of the stateness boundary maintenance mechanism and prevent access to Lithuanian citizenship by potentially disloyal Russians or Poles. However, by declaring the widespread availability of dual citizenship to be unconstitutional and undesirable, it also disappointed the petitioners, a mixed group of left-wing, liberal and minority MPS, who had expected a liberalization of access to dual citizenship, not to mention the hundreds of thousands of Lithuanian emigrants who now were faced with the requirement to give up Lithuanian citizenship if they wanted to get citizenship of their host country.

The response to this charge in the November 2006 ruling is the most concentrated expression of the constitutional doctrine on Lithuanian citizenship and its relation to ethnicity. In this text, the Constitutional Court reiterated that citizenship regulation is a tool of strengthening of statehood and went over the preceding regulation of citizenship in great detail, focusing on its continuity, restrictiveness, and the corresponding shortcomings of the latest citizenship laws. The Court again reasserted the civic-minded conception of the Nation as the state community, however, in the next sentence it reminded the readers that the state of Lithuania came into being on the basis of the ethnic Lithuanian nation, and that the full-fledged life of the latter would be very difficult or even impossible without the former. Several sections of the text are devoted to enumerating the link between the ethnic nation and the state, including the importance of the Lithuanian diaspora. Interestingly, the Court still affirms that it should be easier for ethnic Lithuanian migrants to gain/retain Lithuanian citizenship than to any other type of migrants. However, then it proceeds to present its own version of Lithuanian history of mutual tolerance between the titular Lithuanian nation and traditional minorities (again excluding Soviet-era colonizer immigrants), claiming that inter-ethnic discord was only present when Lithuania was occupied by some foreign power, and that all citizens are members of the civic nation irrespective of their ethnic origin, as long as they are integrated into the society by knowing the language, etc.

The Constitutional Court emphasizes that "the notions of "Lithuanian Nation" and "Nation" used in the Constitution may not be opposed", citing the ethnic Lithuanian nation as the basis and the necessary precondition of the state as the civic nation. The history lesson continued with an overview of the development of citizenship regulation since the

declaration of independence in 1918, geared to establish its continuity and restrictiveness. Even the denial of the Red Army officer's eligibility to gain Lithuanian citizenship apparently echoes a similar provision in the 1919 Law on Citizenship to exclude from Lithuanian citizenship those who have been serving the Russian state. The ruling forcefully reiterated the doctrine already established in 2003 – the imperative to ensure that any possibilities to get dual citizenship should be extremely rare. The Constitutional Court emphasized that the general prohibition of dual citizenship was due to the concern with loyalty to the Lithuanian state, while an exception made for emigrants to the Americas was due to the desire to maintain ties with large diaspora communities. It treated the return of the Vilnius region from Polish occupation to Lithuania as an instance of affirming the basis of Lithuanian citizenry in residence rather than ethnicity. Crossing off the Soviet period as illegitimate, the Court emphasized the importance of the 1989 Law on Citizenship and its "zero option". The bulk of the text was occupied by detailed overview of the development of the subsequent Laws on Citizenship and their amendments, interspersed with admonitions and self-references to the previous rulings, especially the 2003 one.

One the notable characteristics of the November 2006 ruling is a comparatively more extensive referral to international norms, such as explicit appeals to organizations like the UN, Council of Europe and the EU, and documents like the 1930 Convention on conflict of nationality laws, the Universal Declaration of the Human Rights, even the 1963 Council of Europe convention for prevention of multiple nationality and 1997 European Convention on Citizenship not yet signed by Lithuania. However, the Constitutional Court chose to highlight the points which supported a restrictive and statist stand, for example, it

stated that, despite all the changes and increased possibilities for dual citizenship, the general principle that each person should only hold one citizenship remains valid.

The tension between judicial review's aim for atemporal pronouncements *ex cathedra* and the judges' practice of invoking the intentions of the "founders" (e.g. see the interview with Kūris in Digrytė 2008) helps appreciate the changes in the discourse over time. For over a decade the Constitutional Court did not question the Constitutionality of the provision that gave the right to dual citizenship to anyone whose lineage held the citizenship of interwar Lithuanian Republic, except to expatriates of other ethnicities. Now, it took away the possibility to have dual citizenship from everyone, disregarding their ethnicity. As mentioned earlier, the November 2006 ruling effectively instituted a new explicit Constitutional doctrine aimed against ethnic discrimination[67] – in other words, against a privileged position of Lithuanians in Lithuania. Seen from a temporally sensitive perspective, the 2006 ruling represents a seismic shift in the ideational landscape of Lithuanian constitutional jurisprudence: although the Constitutional Court has consistently upheld the imperatives of stateness in relation to citizenship, this was the first time when it was forced to reconcile them with the transnationally diffused imperative of ethnic non-discrimination/non-privileging. What could be the reasoning behind this particular ruling beyond the arguments laid out in its text?

*4.2.2.2. Gleaning the judges' reasoning.* In essence, it is impossible to learn exactly what motivated the Constitutional Court judges to make one or another decision due to the mandate of secrecy of deliberations in the chamber. Indeed, a direct statement by the actor regarding his/her motivations and preferences would be the only "smoking gun" that could

[67] Chairman of the Constitutional Court Egidijus Kūris, interview in Kweder 2007.

validate our hypotheses, and even then we would be operating on a risky assumption of their truthfulness. Stone Sweet (2000) suggests that the unavailability of such information preempts ideational analysis of judicial review in favor of strategic-interest based approaches. However, the process tracing approach and such tools like discourse analysis and content analysis allow us to glean at least a part of the reasoning used by the judges, which can be treated as "hoop" tests of the "fingerprints" of the causal factors operating in this case. Therefore, I look for explicit mentioning of ideational vs. interest-based motives, preferences and concerns. The judges' preferences and concerns can be gleaned from the part of the proceedings of the hearing of the case that was available for public access, as well as from their publications and interviews.

*4.2.2.2.1. International and stateness concerns.* The protocol of the hearing that took place on October 11th, 2006, indicates the judges' concern with the clarity and impartiality of the regulation of citizenship, and since the repatriation clause was the object of the petition, its arbitrariness, inconsistency and problematic implications gained the most attention. For example, judges Vytautas Sinkevičius and Egidijus Kūris repeatedly questioned the representatives of the Parliament about the paradoxical situation of members of ethnic minorities who emigrate to a country other than their homeland, for example, Lithuanian Jews who emigrated to Canada would have had no problem gaining dual citizenship, while their counterparts who went to reside in Israel would not have a similar opportunity. The representatives of the Parliament replied by claiming that what matters is the combination of the person's ethnicity and the ethnic makeup of the destination state – if they align, the dual citizen is privileged, which results in a potential for the dual citizen's loyalty for that country to supersede his/her loyalty to Lithuania,

whereas an ethnic Lithuanian person will never have an opportunity to find another country where s/he would be privileged. Then the judges questioning turned to the problematic nature of determining a person's ethnic belonging, especially if they lead migrant or cosmopolitan lives, and highlighted the amount of discretion required to judge each person's belonging to some homeland and the fact of their repatriation.

Overall, the judges formulated questions to the representatives of the Parliament and to migration officers by referring to international legal norms, the freedom of movement in the European Union, the cosmopolitan nature of the globalized world, etc., thus lending support to the hypothesis of the importance of the international dimension as a reference point for the Constitutional judges. However, some questions demonstrated concerns with Lithuanian diaspora, for example, judge Toma Birmontienė repeatedly inquired whether the Parliament had thought about facilitating the reclamation of Lithuanian citizenship by those emigrants who had lost it before the 2003 law came into effect.

The direct pronouncements of opinions of various judges as to what motivates the decisions pertaining to citizenship vary greatly. In a September 2009 interview (unrecorded), the future constitutional judge Egidijus Šileikis expressed an opinion that the Constitutional Court (before his membership) chose to follow a narrow interpretation of the letter of the Constitution rather than geopolitical considerations. The former Chairman of the Constitutional Court Egidijus Kūris, who has repeatedly presented the image of a constitutional judge as an idealist, emphasized that the only motivation the judges have is to follow the letter and spirit of the law and protect their reputation in the eyes of their fellow judges, and denied the possible influence of considerations of property restitution

on the one hand or "patriotism" on the other (see numerous interviews in the Lithuanian media (e.g. Digrytė 2008; Liaučius 2007); position confirmed by personal interviews in September 2009 and July 2013). On the other hand, one of the key judges in the case of dual citizenship, Vytautas Sinkevičius[68] (2002), has emphasized that the interests of the state have always been the basis for developments in regulation of citizenship in Lithuania and acknowledged the explicit geopolitical considerations of the decision makers who drafted relevant legislation. Overall, it appears reasonable to say that the evidence points to a fundamental mutual imbrication of the "European" norms that denounce the relationship between ethnicity and citizenship and the interests of shielding the newly independent state from potential venues of influence of historical adversaries, both of which played a part in producing the unexpected ruling.

*4.2.2.2.2. The specter of restitution.* It is important to consider the possibility that the ideational-identitarian arguments that stem from historical distrust of neighboring countries do not exhaust potential explanations for restrictive regulation of citizenship in Lithuania. An interest-based approach would bring up the issue of restitution of property that we touched upon in the previous chapter.[69]

Teitel (2000: 130) points out that in a transitional situation, such as the one postcommunist countries have found themselves in, the balance of interests is ever-changing, but the question of property restitution appears to offer a relatively clear matrix

[68] Sinkevičius refused to discuss it on the grounds of the duty of the judges of the CC to keep the discussions that led to the final text of any ruling secret, but his argumentation pertaining to the issue of dual citizenship could be discerned in his public pronouncements, scholarly writings, and in the transcript of the hearing of the case before the Constitutional Court; also, he served as the secretary of the group that drafted the text of the Constitution of the Republic of Lithuania.

[69] Significantly, this apparently materialist topic cannot be disentangled from the question of rights in the reactions to the ruling. In the very beginning, the then chairman of Human Rights Monitoring Institute (later a member of the Parliament) Kęstutis Čilinskas discussed implications of the November 2006 ruling of the Constitutional Court in relation to property restitutions, quoted in Praninskas 2006.

of straightforwardly material interests. However, the possibility to satisfy them all is a different story, which is why countries institute conditions like citizenship status and limited periods for applications. In Lithuania, as in numerous other postcommunist countries, restitution of property took place during a limited period of time and was (and remains) connected to citizenship status, which is a source of friction above all with the world Jewish community (Barkan 2000, Eizenstat 1997, Geleževičius 2003). Consequently, the repatriation clause in the Law of Citizenship had effectively precluded Jewish, Polish, Russian and German expatriates from claiming pre-Soviet property rights, which was the main motivator behind the petition which started the dual citizenship case. In fact, the lawyer of the Israeli citizen whose quest for property restitution was the initial impulse behind the petition, Faina Kukliansky, suggested that the repatriation clause was directly related to the desire to circumscribe restitution of Jewish property located in the most prestigious districts of Lithuanian towns (unrecorded interview, September 16, 2009). She proposed that the Constitutional Court judges chose to interpret the nondiscrimination charge in a restrictive rather than liberalizing way in large part because they did not want to open this Pandora's box.

The records of the proceedings of the hearing of the case in the Constitutional Court reveal that the judges actually did raise the question whether the legislature intentionally changed dual citizenship availability in relation to restitution prospects. The representatives of the Parliament, denied the existence of a direct relationship between citizenship regulation and restitution concerns in front of the Court, but the fact that this question was raised indicates that the judges were aware of the implications of citizenship regulation for the policy on restitution of property. In fact, Arminas Lydeka, one of the

principle authors of the 2003 Law of Citizenship, highlighted that it came into effect long after the end of the application period for property restitution (2001), which entailed intentionally distancing citizenship regulation from restitution issues.

The direct relation between the issues of citizenship and the issues of property restitution is evident in the public discussions of the ruling mentioned in the previous chapters, and in the fact that a new case questioning this relationship was consequently brought to the Constitutional Court by the same courts whose appeal to a Vilnius court on behalf of the Israeli citizen trying to regain her property in Šiauliai resulted in the challenge to the discriminatory nature of the repatriation clause. Egidijus Šileikis (a current Constitutional judge who was charged with preparing the materials for this case), before he became a member of the Constitutional Court, emphasized the sea change that the antidiscriminatory ruling on citizenship regulation could bring about in the developments pertaining to property restitution, to the point where the recognition of the unConstitutional nature of ethnically-conscious citizenship regulation could have retroactive effects by reanimating restitution, which up till then appeared to be essentially over (Šileikis 2007; reiterated in the unrecorded interview conducted in September 2009).

The Constitutional Court passed the ruling on the conn ection between citizenship and restitution of property on December 22, 2010.[70] This ruling in essence reiterated the constitutional doctrine that supports limiting restitution of property to citizens who hold permanent residence in Lithuania, and a limited restitution at that, which was established by the June 20, 1995, ruling[71] and fleshed out in subsequent rulings, such as March 4, 2003,

[70] 2010 December 22 ruling "On restoration of the rights of ownership only to citizens of the Republic of Lithuania".
[71] 1995 June 20 ruling "On the restoration of citizen's rights of ownership to the existing real property".

August 23, 2005, July 5, 2007, May 20, 2008, July 4, 2008, and March 9, 2010, which are mentioned in the December 2010 ruling text[72] in the self-referential manner characteristic of Constitutional review.

In conjunction with the November 2006 ruling against dual citizenship, this restrictive approach to restitution did not provide additional venues of pursuit of property restoration for those former inhabitants of Lithuania who had, according to the earlier clause of the Citizenship Law, "repatriated to an ethnic homeland". Even the possibility of the highly unlikely course of action that these claimants would in theory be able to pursue, namely, renounce their current citizenship, become citizens of Lithuania and move to Lithuania, was preempted by the court's emphasis on the limited timeframe of restitution which had expired several years ago and was not, in the courts view, auspicious to an extension aimed at the persons who did not hold Lithuanian citizenship within the time limits of the general process of restitution carried out in Lithuania.

It is important to note in the context of this dissertation that the Constitutional Court sided with the representatives of the Parliament of Lithuania against the plaintiffs and supported their argumentation that the question of restitution regulation should not be considered part and parcel of citizenship regulation, but is to be interpreted separately from citizenship regulation, pointing out that the laws on restitution are not and have never been designed to regulate citizenship and its acquisition, despite the fact that citizenship is the *sine qua non* condition of restitution. Such a reiteration was targeted against the reasoning of the district courts who addressed the Constitutional Court precisely because of the November 2006 ruling against ethnic discrimination in attribution of dual citizenship. The

[72] 2010 December 22 ruling "On restoration of the rights of ownership only to citizens of the Republic of Lithuania".

district courts had raised the possibility that such persons may be able to apply for restitution of their property despite the fact that the term for submitting such requests had passed, because they had not been able to pursue restitution in the provided timeframe due to discriminatory and thus unConstitutional laws like the repatriation clause, and therefore may be granted an extension for the term of submitting applications for restitution of their property. However, the Constitutional Court foreclosed this possibility by reaffirming the legal, geographical and temporal limits of eligibility for restitution.

The Constitutional Court also agreed with the arguments of the representatives of the Parliament who pointed out that the European Court of Human Rights in its ruling on the case Boruch Shub v. Lithuania ((dec.), No. 17064/06, June 30, 2009, mentioned in the December 2010 ruling[73]) has confirmed the prerogative of states to determine the rules of citizenship acquisition and their limited responsibility for restitution of property confiscated before signing the Convention. In this way, we again witness how arguments pertaining to international norms are employed to shore up the imperatives of stateness and the interests of the state. This ruling on restitution is not included in the content analysis of the rulings pertaining to the Constitutional doctrine of citizenship due to the explicit statement of the Constitution Court against similar attribution. However, it does provide additional support for the argument presented in this dissertation, namely, the mutual imbrication of the international human rights norms and stateness concerns in the constellations of citizenship regulations.

Hall (1989: 390) observes: "If the Keynesian case demonstrates that ideas have a real power in the political world, it also confirms that they do not acquire political force

[73] 2010 December 22 ruling "On restoration of the rights of ownership only to citizens of the Republic of Lithuania".

independently of the constellation of institutions and interests already present there." An inquiry into the reasoning behind the crucial Lithuanian Constitutional Court ruling testifies to profound difficulty, if not futility, of disentangling the mutual imbrication of ideas and interests, as well as to the key weakness of actor-centered ideational research – the ultimate impossibility of knowing their "real" motives., I have strived to show the enduring value of ideational research in making sense of a paradoxical situation that goes against the predictions of mainstream theories. In the next part of this chapter, I shore it up by triangulating with content analysis of the rulings of the Constitutional Court pertaining to the question of Lithuanian citizenship.

*4.2.3. Content analysis of the rulings of the Constitutional Court.*

I have analyzed the development of the Lithuanian Constitutional doctrine on citizenship and ethnic discrimination by exploring the changing emphasis on different elements and suggested that there is an identifiable shift from a more ethnic to a more civic conception of the nation-state, but did not discern similar directional patterns in the invocations of international norms nor concerns with stateness. However, it is important to conduct a more thorough empirical analysis, which is the object of this subsection. Content analysis, defined as a "systematic reduction of a flow of text (or other symbols) to a standard set of statistically manipulable symbols representing the presence, the intensity, or the frequency of some characteristics relevant to social sciences" (Shapiro and Markoff 1998: 18), provides a possibility to operationalize underlying dimensions of the conceptualization of citizenship in the doctrine of Constitutional interpretation. In the face of unavailability of direct access to the reasoning of the judges, I follow Holsti (1969) in the attempt to employ content analysis in making inferences about antecedents of the

counterintuitive outcomes of judicial review, which dovetails with the heretofore usage of discourse analysis as a method also oriented towards discovering the underlying ideational patterns relevant to the reasoning behind the case at hand. Content analysis, understood as "the determination of characteristics of a source from the natural-language utterances it emits" (Hays 1967: 16), is a fitting instrument for the inquiry into where the Constitutional Court is coming from.

I set out to discover patterns of references to international norms and ethnic vs. civic basis for citizenship as a proxy for the influence of international norms brought about by EU normative pressures, and of references to stateness in the rulings of the Constitutional Court, and to track their changes over time, in order to discern whether there is a trajectory that would provide support for or negate the proposition developed in this dissertation: namely, that a state that has a starting point as an ethnonationalist postcolonial emigration state is eventually boxed in by the international norms which delegitimize preferential treatment of co-ethnics, so that its only recourse is to resort to universal restrictiveness as a stateness boundary maintenance regime. I use content analysis to explore whether it is possible to establish a parallel between the ideational developments of the Constitutional doctrine on citizenship and the process of European integration as seen from the postcommunist Central and Eastern Europe, and whether it is employed in favour of or against the state interests.

*4.2.3.1. Operationalization and measurement.* After preliminary research on the five relevant rulings, I coded them on three separate conceptual dimensions: the frequency, intensity and positivity vs. negativity of references to ethnic vs. civic elements, the frequency of references to the international realm, and the frequency of references stateness

concerns. After reviewing each of them, I check if there is a correlation between the trends in the different conceptual dimensions.

*4.2.3.1.1. Coding the international and stateness dimensions.* References to the international realm, which is a "conceptual domain" (Carney 1972: 270) that includes such words as "international", "universal", "European", "Union", does not lend itself to evaluative coding, since references to it are never negative. Therefore, I only calculated the frequency of such utterances to see if their amount changes over time. The same can be said about the keywords associated with stateness – it is extremely unlikely that they would carry negative valence. Therefore, to measure the dimension of stateness, I counted only the frequencies of words like "independence", "loyalty", "statehood" and "occupation" (see Appendix A for more detailed instructions of coding the relevance of the word "state").

*4.2.3.1.2. Coding the civic-ethnic dimension.* The bulk of the decision making went into coding the texts on two-dimensional indices of a combination of a categorical variable "ethnic vs. civic" and an interval scale of "intense vs. neutral" combined with evaluative directionality "positive-negative". For the purposes of my hypothesis I conceptualize the distinction between "ethnic" and "civic" dimensions as they have been actualized in the common European space: it is the difference between emphasizing descent vs. territory in defining criteria for citizenship. In the codebook I constructed (see Appendix A) before close analysis of the texts, the category "ethnic" included word forms of "ethnic", "origin", "descent", "culture", "language", "tradition", "customs", "identity", "repatriation"[74] and the like, and the category "civic" included word forms of "tolerance", "equality",

[74] "Repatriation" is defined in the documents pertaining to Lithuanian citizenship as "departure for one's ethnic homeland and settlement there."

"discrimination", "civic Nation", "national concord", "rule of law", and anything referring to "residence" and "territory".

After conducting the first round of coding, I had to revisit my codebook and make corrections in the way I coded "language": although in general "language" would appear to be more attributable to the ethnic side, a specific phrase "state language" was used in these rulings in conjunction with "civic Nation", demonstrating an explicit attempt to co-opt the arguments pertaining to language to the civic side of the arguments. Hence I recoded the texts, coding instances of "state language" as civic and freestanding words "language" as ethnic. However, one should not think of this issue as easily resolved, because it may be argued that even civic rhetoric serves ethnic purposes when it is used in conjunction with language. In order to evaluate whether state language can be ascribed to the civic rather than the ethnic side of the divide, I conducted a perfunctory analysis of other rulings of the Constitutional Court that explicitly deal with the issues of state language, i.e. the 1999 ruling and 2009 decision pertaining to one of the main grievances of ethnic minorities, first and foremost the Polish, – the transcription of their names in passports in Lithuanian rather than in the original language.[75] These documents demonstrate the unwavering stance adopted by the Constitutional Court in relation to the monopoly of Lithuanian language. A strict refusal to include non-Lithuanian letters like "w", "q" or "ł", and the requirement to spell names out according to their pronunciation, results in either forcible changes of names

[75] Constitutional Court of the Republic of Lithuania. 1999. Ruling "On the compliance of the 31 January 1991 Supreme Council of the Republic of Lithuania Resolution "On Writing of Names and Family Names in Passports of Citizens of the Republic of Lithuania" with the Constitution of the Republic of Lithuania." Case No.14/98. Vilnius, 21 October 1999.; Constitutional Court of the Republic of Lithuania. 2009. Decision "On the Construction of the Provisions of Items 4 and 7 of the Reasoning part of the Ruling of the Constitutional Court of the Republic of Lithuania of 21 October 1999." Case No.14/98. Vilnius, 6 November 2009.

or an inability to obtain a passport[76]. The government and the Constitutional Court continue to uphold this requirement, in effect continuing the policy of Lithuanization of family names in a bizarre mirror image of the Polonisation of Lithuanian names conducted by Poland during the times when it dominated parts of Lithuania[77]. Taking into account such effects of the enforcement of the monopoly of the state language in the public sphere, I maintain that we should remain skeptical when faced with claims that unequivocally ascribe state language to the civic dimension.

Other than the question of language, the designation of ethnic vs. civic keywords in the codebook is quite mainstream and thus helps avoid too fine of a tuning to match the peculiarities of the case and provide a broader analytical purchase. Laborious coding and re-checking was conducted three times at different dates to ensure consistency of coding across cases, which was equal to 1 (identical coding every time).

*4.2.3.1.3. Coding intensity and valence.* Intensity, a popular category in content analysis research (see Berelson 1971 [1952]: 160, Gottschalk, Winget and Gleser 1969, Neuendorf 2002: 97), is measured by counting verbs in context: "must", "need", "have to", "emphasize" vs. "may", "could", "mention", "note", as well as looking for adjective or adverb modifiers, such as "deviant", "unacceptable" and the like (see Appendix A for the full dictionary of coding). In my research, I combine the measurement of intensity with the measurement of negative or positive evaluation in order to be able to give weights to ethnic and civic utterances. Depending on the intensity and the direction of evaluation of each

[76] For example, my husband's family name, Grzeskowiak, which happens to be Polish-American, could be spelled „Gžeškoviak" in Lithuanian based on pronunciation, or at the very least would have the letter „w" replaced with a „v" and would effectively differ from the rest of the family.
[77] My last name, Verseckaitė, contains a letter „c", which was not there originally, due to the Polonisation of its spelling.

unit under measurement, it is assigned a score, where -2 means intense negative, -1 means moderate negative, 1 means moderate positive, and 2 means intense positive. A 0 on this scale allows us to single out paragraphs where there is no mention of dimensions in question. Certain scholars (see Krippendorf 1980; North et al. 1963) suggest that the value "0" in scales of evaluation and intensity should be assigned not to the absence, but to the statistical mode of the studied dimension. However, in the case of the rulings of a Constitutional Court a contrary choice is justified in that, first, it serves the purpose of measuring the presence of dimensions of interest together with their valence and intensity, and, second, it helps to control subjectivity by allowing the coding to be more automatized and less dependent on individual perception bias. Whatever shortcomings the coding scheme may have, it serves the basic purpose of the research, as it is consistent across cases, thus allowing for comparisons of trends in increase or decrease of the presence and valence of dimensions under scrutiny.

*4.2.3.1.4. Unit of measurement.* My initial plan was to use a clause (a unit of meaning that can serve as a stand-alone statement containing a subject and a term) as a unit of measurement, which is recommended as the single most basic unit of meaning that can be discerned in the flow of communication by Gottschalk and his collaborators (e.g. see Gottschalk, Winget and Gleser 1969; Gottschalk 1995). But after initial scanning of the texts of rulings such a recommendation proved unfeasible to follow – Gottschalk's methodological recommendations are mostly formulated for psychological research, directed at measurements of a person's natural speech, while the language of the rulings of a Constitutional Court is far more verbose and is not easily broken down into single-meaning clauses. Consequently, I decided to use the unit of measurement that is a popular

unit in research of political communication – a paragraph. This may seem like a mechanic approach, but it is, first, conducive to quantitative measurements of the text, enabling relatively straightforward comparison of the presence, frequency and intensity of dimensions under consideration, and, second, paragraphs in a legal document do constitute an actual unit of meaning. Berelson (1971 [1952]: 135-136) provides a useful clarification: the keywords are the recording unit, and the paragraph is the context unit, enabling to assign valence to the utterance.

The rulings were first divided according to their standard structure – introduction, the first part where the arguments of the institutions or persons addressing the Court are laid out, the second part where the Court lays out its argumentations, and the conclusion. Only the second part, where one finds the actual thoughts of the Constitutional Court, is coded and measured as a relevant source of information about the opinions of the Constitutional Court, because the first part does not represent the reasoning of the judges, but rather is a summary of the arguments presented by the petitioners and other parties to the case, and the introduction and conclusion summarize the relevant legislation instead of presenting arguments. If a paragraph contains both sides of the continuum, each of them is coded. Finally, since the rulings are of quite varying sizes (from 8 to 76 pages), I calculate relative frequencies in order to achieve comparability.

*4.2.3.2. Findings of the content analysis of the rulings of the Constitutional Court.* The results of pattern analysis (North et al. 1963: Ch.7) of the five rulings can be summarized in Tables 1-3 and Figures 1-6 (see Appendix B).

Two conclusions are readily observable. First, there indeed is a tendency of increase in relative and absolute negativity towards the "ethnic" dimension. Only the deviant case

of the ruling of November 11, 1998, is marked by the spike in the intensity and valence of paragraphs with "ethnic" keywords, explanation of which goes beyond quantitative textual analysis and has to do with one of the targets of this ruling – local politicians in regions traditionally populated by ethnic minorities which settled there during times when those regions were occupied by one or another neighboring country. In fact, this precise 1998 ruling was instrumental in the early stages of my research in drawing the attention to the dimension that is not subsumable under ethnic nor under civic headings and that required an addition to the coding scheme – the issue of stateness. In that sense, this dissertation is a theory-building exercise, as its main theoretical contribution was derived based on the cues in the empirical data.

Overall, content analysis appears for the most part to confirm the tendencies in change of valence and intensity of the "ethnic" vs. the "civic" dimension over time that are consistent with the hypothesis of anti-ethnic influence of the process of integration into the West. On the other hand, we should note that the more directly operationalized "international" dimension does not exhibit any clear directional tendency. Also, "international" keywords are usually mentioned in different paragraphs than either the "ethnic" or the "civic" ones, so it is not possible to establish a clear picture of correlations on a paragraph level, although the few paragraphs that do contain both dimensions under scrutiny suggest that there is indeed a correlation between negative valence of "ethnic" and positive valence of "civic" in instances where the Constitutional Court calls upon international norms to justify its argument.

The drop in references to the "international" dimension in the rulings of November 11, 1998, and of December 30, 2003 that counteracts the expected longitudinal increase in

the positive reference to the "international" dimension can be understood in conjunction with their topic – a sharply defined issue of politicians' loyalty to the state. In fact, the references to independence and statehood allow us to go beyond the straightjacket of the "ethnic" vs. "civic" stereotypes and remind us that there is more to the situation of the postcommunist countries of Central and Eastern Europe, bringing us back to the key proposal of this dissertation – the fundamental role of stateness concerns in citizenship regulation.

The difference in the frequency of keywords associated with stateness and those associated with the international dimension does not exhibit a clear tendency in either direction and is more dependent on the specific subject of the rulings under investigation and the relative degree to which they lend themselves to invoking international norms as opposed to being inherent to the definition of statehood. Granted, Constitutional Courts can be expected to be dominated by a vision informed by the concerns of stateness rather than international norms, as demonstrated by the notorious case of the German Constitutional Court which saw itself as a legitimate challenger to the EU on behalf of the German people (see Eriksen and Fossum 2011, Komárek 2013, Miller 2014, Wendel 2011). Yet the difference in intensity and valence of the "ethnic" dimension, despite similar topics and targets, is evident between the rulings of the Constitutional Court that were passed before and after Lithuania's EU accession process officially began, providing support to the hypothesis of the influence of Euro-integration. The fact that the trend continued after achieving EU membership lends support to the supposition of sufficient socialization into the EU norms of non-discrimination which were being observed even without external incentives.

Content analysis' "capacity to render narratives into a countable form" (Shapiro and Markoff 1998: 23) has served its purpose of triangulation, and this exercise has helped to establish with further confidence the decline of valence of the ethnic dimension of citizenship and the increase of valence of the civic dimension of citizenship in the rulings of the Lithuanian Constitutional Court in conjunction with the process of Euro-integration. In addition, it has helped to elucidate the centrality of stateness concerns to citizenship regulation that I advocate. The dimension of stateness has a much more pronounced presence in the rulings of the Constitutional Court than any other of the dimensions that were measured. The relative frequency of the keywords pertaining to the dimension of statehood and of the international dimension cannot be said to reveal any stable directional pattern, thus providing additional support to the criticism of postnationalist theories that proclaim the decline of the relevance of the nation-state.

The prominence of stateness in the rulings of the Constitutional Court serves to highlight the fact that stateness concerns are so crucial to citizenship regulation that they can even cause deviation from the mainstream assumptions of what constitutes an emigration country's interests. The widely accepted idea that an emigration state seeks diasporic dual citizenship in order to exert political control and encourage remittances is fundamentally challenged by the outcome of the Lithuanian case. Furthermore, attention to the dimension of statehood suggests that the focus on security which characterizes the newest wave of citizenship studies is too narrow to capture the logic behind a restrictive backlash against dual citizenship and would benefit from paying attention to the more fundamental questions of stateness and national identity that underlie what may

superficially be termed security concerns. Instead, I propose conceptualizing these symptoms as the stateness maintenance regime.

The close analysis of textual evidence conducted in this chapter helps elucidate the way in which the imperative of independent statehood can start devouring its own children, which is a fitting title for what is happening in the Lithuanian case. With their hands tied by the international norms of non-discrimination, which in this case turned into non-privileging of co-ethnics, the elites are ready to pay the price of losing a large part of the nation in their pursuit to stave off potential encroachments by historical enemies. Juxtaposing the curious case of dual citizenship with the emigrational demographics of Lithuania in the previous chapters highlighted the theoretical puzzle that this case presents; and the discussion of identitarian implications of European integration and the process-tracing of the debates surrounding the 2006 ruling on citizenship regulation in this chapter allowed us to deconstruct this puzzle into potential ideas- and interests-based lines of reasoning, if only to demonstrate the shortsightedness of an either/or logic when it comes to adjudicating between them. I would be inclined to agree with Blyth (2007: 776), who suggests that an attempt to disentangle ideas and interests, which are a compound, may obscure more than it may explain. Ultimately, my research lends additional support to the relevance of what McCann (2009: 835) refers to as relational rather than linear causality, and, instead of confirming the charge of "ideational sugarcoating" (Hirschl 2009: 828) of interests, demonstrates that constitutional judges are indeed faced with "tragic choices" (Graber 2005: 448) and boxed into a corner by institutionalized, but far from harmonized, ideas. The Lithuanian case demonstrates how the conjunction of norms that prohibit privileging a particular ethnicity on the one hand, and the imperatives of stateness on the

other hand, prompted the elites to pay the price of losing a considerable part of the nation in their pursuit to stave off encroachments by historical enemies projected onto ethnic minorities. It thus provides a corrective to claims like Checkel's (1999: 108) that in a clash between international and domestic norms the latter matter more, and presents a more poignant understanding of agency in ideational struggles.

However, the question remains whether such a paradoxical mutual impact of the hegemony of international norms of nondiscrimination and stateness concerns is unique to the Lithuanian case, or whether it has broader comparative purchase. In order to address this question, in the next chapter I overview dual citizenship regulation trends in various regions of the world, paying special attention to Lithuania's most obvious counterparts – European countries, – but also conducting a more in-depth analysis of South Korea – a case that is sufficiently far removed from Lithuania to be a formidable test of how well my theory travels across regions.

## Chapter 5. Comparative implications

This dissertation started with a puzzle of a country whose citizenship policies have become contrary to what the mainstream citizenship theories would predict for a country of its attributes. Thus an in-depth analysis of the context and content of the Lithuanian citizenship discourse and regulation became a testing grounds for unpacking the claims of those theories and their implications. Having conducted the empirical data analysis, it is time to revisit the theoretical background and inquire into the broader applicability of the propositions developed in this dissertation – namely, that the identitarian dimension of citizenship is at the same time delegitimized, but also increasingly emphasized as an unintended consequence of the decoupling of rights and citizenship, and that we should approach citizenship as a boundary maintenance regime employed by countries facing challenges to stateness, which in the age of globalization pretty much includes everyone.

To establish the extent of comparative purchase of these suggestions, in this chapter I review the trends in citizenship regulation around the world, paying special attention to dual citizenship and naturalization requirements. I also conduct an in-depth comparison with the case of dual citizenship in South Korea, another ethnonationalist postocolonial state with a large diaspora, and test the fit of the main categories of my explanation: hegemony of international norms, the reinforcement of the identitarian dimension of citizenship, and stateness concerns exacerbated by postcolonialism and migration on the other. I conclude that the increasing availability of dual citizenship should not be uncritically accepted as an indicator of postnationalism, and that a more complex outlook, which takes into account naturalization requirements and the discourse associated with dual citizenship, points towards a retrenchment of the identitarian dimension of citizenship and

the role of citizenship as a boundary maintenance regime in response to the challenges that both postcolonial experiences and globalization pose for stateness.

### *5.1. Revisiting the theoretical background*

Facing an empirical puzzle that needed solving, I turned to the dominant theories in the field of citizenship studies. One of the major theories developed in the past several decades is the so called liberalization/ convergence hypothesis. It claims that there is a trend of convergence among different countries' citizenship policies due to their shared realities and mutual learning, and that the convergence is moving into the direction of liberalization, epitomized by increasing availability of dual citizenship and decreasing relevance of identitarian characteristics in citizenship ascription. These theories are more like clusters of a mix of both descriptions and prescriptions, but ultimately they stem from the reality of increased diversity that is caused by migration and the need to accommodate that diversity and are either based on postnationalist or multiculturalist approaches.

The postnationalist ideas are based on European integration, where the freedom of movement in the common market has brought about the decoupling of people, state and territory. According to this line of reasoning, citizenship is becoming less relevant due to the international human rights regime and the availability of more rights to people without citizenship (Jacobson 1996, Soysal 1994). Another approach that can serve as a foundation of the liberalization/ convergence hypothesis is multiculturalism. It also accentuates that ascriptive identities are less relevant due to increased diversity in states, but here citizenship remains relevant as the main tool of incorporation and participation in the polity. However, both of these approaches converge on the idea that citizenship is less

associated with national identity that the models of citizenship that are based on the conception of nationhood as discussed by Brubaker (1992).

Most of these theories were developed with a view of the Western immigration states. However, when it comes to dual citizenship, the hypothesis of liberalization/convergence is readily ascribed to emigration states as well. They are expected to expand dual citizenship to ensure the links with their diaspora, even if the liberalization is asymmetrical and only applied to co-ethnics. Therefore, Lithuania's restrictive turn provided an especially interesting case in the foreground of these theories.

I proposed to think of the phenomenon of the decoupling of rights and citizenship from another angle: once citizenship is stripped of its rights dimension, what is left is the identitarian dimension, which thus gets inadvertently emphasized. The analysis of the Lithuanian discourse on dual citizenship demonstrated how this dynamic works in relation to the diaspora who claim that they already have all the rights that they need, but what they really want is to feel that they belong and to be able to identify with their ethnic homeland.

I hypothesized that a similar logic operates on the side of the immigration state. Rights are attributed to migrants to a large extent via the status of denizenship. (Hamar 1990). However, the only fully secure status (or at least mostly secure from deportation) is full citizenship. When we look at the process of naturalization, the policies and debates related to citizenship acquisition, we can see that the relevance of identity from the perspective of the host state has not only not disappeared, but in many cases has been reinforced both by the aforementioned disaggregation of the rights and belonging dimensions of the conception of citizenship, and by the desire to maintain the dominant local culture and to varying degrees assimilate the immigrants.

The fact that the Lithuanian dual citizenship discourse consistently shows a very strong inclination towards dual citizenship for co-ethnic emigrants, and yet such a possibility was cut off by the Constitutional Court, which heretofore had not shied away from acknowledging the legitimacy of treating the descendants of interwar Lithuanian citizens differently than any other claimants to citizenship, prompted me to look for an additional variable which would help explain the unexpectedly restrictive outcome. The hegemony of international norms which delegitimize discrimination on the basis of identity in citizenship regulation is not a sufficient explanation in itself, because it could either lead to the availability of dual citizenship for everyone, or for no one. I argued that a full explanation requires taking into account Lithuanian experience as a postcolonial state that has experienced foreign domination and is conditioned to be concerned about its stateness. Perceiving a threat of co-optation of dual citizenship by the agents of foreign aggression, and yet unable to differentiate between potential foreign aggressors and co-ethnic migrants, Lithuania chooses to give up the latter as a price for containing the former.

Such a political constellation where the possibility to privilege the titular nation in its postcolonial state is again imperiled, although in a roundabout way, by foreign domination, be it the West or the East, is met with a continuous undercurrent of the perception of unfairness and a search for ways to circumvent it. The feedback loop in which Lithuania has been stuck since the Novemebr 2006 Constitutional Court ruling highlights the intermeshing of the identitarian and stateness dimensions. In this chapter I also want to test whether this proposition can be applied beyond the realm of postcolonial experiences. I base my hunch on the idea that it is possible to interpret immigration as a threat to stateness due to the constant pressure on citizenship. If citizenship is the interface between

immigration control and societal integration (Brochman 2002), then it is possible to apply the condition of the intermeshed concerns with stateness and identity to the countries of immigration as well.

In sum, I proposed that, instead of accepting the postnational thesis of decreasing importance of citizenship, we need to pay attention to the unintended consequences of decoupling of rights and citizenship in that its identitarian dimension gets re-emphasized, and hinted that the imperative to continuously police the boundaries of stateness using citizenship regulation may be relevant to more than just postcolonial countries. In the following sections, I test how well these propositions resonate with the situation in various parts of the world.

### *5.2. Dual citizenship around the world*

Dual citizenship regulation is commonly used as an indicator of liberalization or restrictiveness of a country's citizenship regime. One of the main arguments of the liberalization/convergence thesis is the increased availability of dual citizenship across the world. In this section, I try to answer the question whether such a tendency can be established, and whether it should be a synonym of liberalization. In this part, I use secondary data and rely on the research conducted by other scholars, therefore the conclusions should be taken with caution due to the plurality of approaches and methodologies which make systematic comparison harder. However, it is possible to still discern broader tendencies in the development of dual citizenship.

I begin with a brief overview of citizenship regulation trends in the region on which the postnational liberalization/convergence thesis is essentially based – Western immigration states – in an attempt to discern whether it still lends support to postnationalist

proclamations. Then I look at Central and Eastern Europe and post-Soviet states as the closest reference point for contextualizing the Lithuanian case and tentatively testing the applicability of its insights. Afterwards I turn to broader brushstrokes and briefly review the development of dual citizenship in other parts of the world. Since the ideas of the liberalization/convergence thesis and the political contentiousness of citizenship and migration make sense mostly in a democratic environment, I bracket those areas where democratic effectiveness could be questioned. I finish my world tour with a look at Asia, and take a more in-depth look at the case of South Korea, whose dual citizenship experiences are especially conducive for the evaluation of the comparative purchase of the conditions of possibility distilled by the Lithuanian case.

*5.2.1. The Western world.*

The liberalization/ convergence thesis, as much of citizenship studies in general, was formulated based on the experience of Western immigration states. In this subsection, I overview comparative research on citizenship regulation in these countries, paying special attention to the argument of convergence and to the main litmus tests of the liberalization postulate, namely, access to dual citizenship and the character of naturalization requirements.

*5.2.1.1. Western European states.* The foundational pronouncements of the liberalization/ convergence hypothesis appeared in the early 1990s. Its proponents analyzed the experience of European integration and the position of migrants, and claimed to identify a trend whereby more and more rights were awarded to a person on the basis of domicile rather than citizenship (Soysal 1994, Jacobson 1995). Another part of this hypothesis stemmed from either the outlook on European integration and the impact of

internal border abolishment and establishment of common external borders on the harmonization of migration policies (Faist and Ette 2007, Vink 2005), or attribute the trend towards convergence to similar experiences of migration pressures (Weil 2001), which are intimately related to citizenship policies and therefore should have an impact towards greater convergence even if citizenship firmly remains in the domestic domain of competence.

As a classical example of testing the liberalization/ convergence hypothesis, Howard (2005, 2009) conducted a comparative study of the trends in restrictiveness of citizenship policies in the EU countries from 1980s until 2008 by comparing them based on a citizenship policy index (CPI) composed of the availability of *ius soli* and dual citizenship for immigrants, as well as the relative difficulty of naturalization requirements such as the length of residence – all classical elements of the liberalization/convergence thesis. He found that, on a scale from 0 to 6, Western European countries in 2008 ranged from a very liberal Belgium (score 5.50) to a very restrictive Austria (score 0.00), with 5 countries considered restrictive, 2 moderate and 8 liberal. The range of the scores was ultimately the same as in the 1980s, but Howard (2009) definitely identified a trend towards liberalization in that two countries had moved from restrictiveness into the medium range, and all four countries that occupied the medium range in the 1980s had moved to the liberal category. Thus Howard (2009) concluded that we can indeed witness both a trend of liberalization and relative convergence, although he expressed caution on both accounts due to the increasing use of civic integration tests and the remaining gap between the most restrictive and the most liberal countries.

The liberalization/convergence hypothesis has been increasingly challenged by scholars who put a greater emphasis on either a lack of convergence or a move towards increased restrictiveness. Those who criticize the notion of convergence mostly focus on the persistence of national models of citizenship. Since Brubaker's (1992a) seminal book, the notion of different models of citizenship and nationhood became an accepted part of the discourse on citizenship regulation in Europe. He distinguished a more ethnic German model and a more civic French model. For now let us bracket the fact that the civic model appeared more assimilationist than the ethnic one. Other authors have engaged in similar pursuits to categorize the types of citizenship regimes, but most of them fall into a similar discourse of the civic-ethnic elements and are mostly derived based on the relation of citizenship regulation to identity and diversity.

A representative example can be found in Koopmans et al. (2005) who construct four ideal-typical conceptions of citizenship based on two dimensions: first, whether access to citizenship is connected to ethnic criteria or not, and, second, whether cultural pluralism is acknowledged or, conversely, cultural monism prevails. Countries that grant cultural rights to various groups but do not connect access to citizenship with ethnic criteria are labeled as multiculturalist, for example, the UK and the Netherlands at the time. Those which do not acknowledge ethnic criteria either on the individual or a group level are considered universalist, approximated by France. These two types of citizenship conception are more characteristic of former colonial powers that have had to accept diversity from the outset. If a country does not recognize cultural plurality and institutes ethnic criteria for citizenship, it is considered assimilationist, for example, Germany. Finally, a country which would acknowledge cultural group rights, but would use ethnic

criteria for access to citizenship, would be labeled as segregationist, epitomized in the "guestworker" philosophy. Koopmans et al. (2005) acknowledged that these models are not static, but rather move within the conceptual space in response to political pressures. This study argued that the general trend in the dimension of ethnic vs. civic individual criteria for citizenship is movement towards the civic pole, lending support to the liberalization/convergence hypothesis, while at the same there is a divergence in societal immigrant integration in terms of cultural group rights brought about by the post-9/11 atmosphere and examples of the failures of migrant integration in the Netherlands in the 1990s. Thus, when it comes to dual citizenship, etc., Koopmans et al. (2005) could be considered among the supporters of liberal/ convergence hypothesis. However, the shift towards the civic-universalist model comes with integration pressures that shade into assimilationism with their language and civic integration, or even cultural knowledge, requirements for naturalization. Therefore, Koopmans et al. (2005) can be considered a good example of a trend towards more subtle scholarly approach that qualifies the liberalization/ convergence thesis.

An especially large study of citizenship policies in the EU countries was conducted by IMISCOE, a team of researchers funded by the EU that produced several volumes of analysis in the late 2000s (e.g. Bauböck, Ersbøll, Groenendijk and Waldrauch, 2006a, 2006b). They suggest that the liberalization/ convergence thesis should be qualified both due to increasing application of "thicker" requirements for naturalization and to nonlinear development of dual citizenship acceptance which fluctuates with the changes in a country's politics and government. These scholars also point towards a continuing trend of national variety in citizenship policies. In an empirical study of immigrant citizenship

requirement trends from 1980s until 2008 in 10 European countries, Koopmans *et al.* (2012) drew a similar conclusion and stated that immigrant rights have stagnated since the early 2000s, and that there remains large variation among states' scores.

However, a large part of criticism for the liberalization/convergence hypothesis comes from those scholars who posit a reverse trend: they claim that there indeed is a trend of convergence, only it is moving in the direction of restrictiveness rather than liberalization (Joppke 2007a, 2008; Joppke and Morawska 2003). This argument is focused on the hardening of naturalization requirements, mostly expressed in civic integration tests that immigrants are required to take. When such requirements are present, access to dual citizenship does not mean that there are fewer identitarian requirements placed upon a person – to the contrary, the person is facing double identitarian pressures from both countries.

Some scholars argue that migrant integration policies are tentatively converging towards multiculturalism (Schain 2010), while others posit a backlash against multiculturalism (Alexander 2013). However, there is a growing body of comparative research on the trend towards increasing "thickness" of the naturalization requirements across countries as a counterpart to immigration control (Carrera 2009, Joppke 2007a, van Oers 2013; van Oers, Ersbøll and Kostakopoulou 2010). While basic language requirements have been more common (in his comparison of 25 countries' citizenship regulations, Weil (2001) found 17 which had a language requirement and only 4 which had a history test, 2 of them being the entrenched ethnonationalists Estonia and Latvia), there is an increase in both the level of required linguistic proficiency and the additional requirement of knowledge about a country's history and culture. Goodman (2010) develops

a civic integration index (CIVIX) to measure the degree to which achievement of desired status is made conditional on language proficiency, knowledge about the country and liberal values, a trend that was started by the Dutch in 1998 and quickly caught on. She argues that a linear additive approach to naturalization requirements employed by some scholars leads to overstatement of their restrictiveness and suggests confining the label of restrictiveness to the dimension of access (availability of *ius soli*, dual citizenship), while treating the knowledge requirements as a measure of the degree of difficulty, depending on where they are applied on the immigration and integration timeline – the gate of entry, of settlement or of naturalization. Goodman (2010) compares the amount and strength of civic integration requirements in 1997 vs. in 2009 and shows a definite increase in 6 EU countries (Denmark, Germany first and foremost, followed by Austria, the Netherlands, the UK, and France), while 4 show no change and 4 others exhibit minimal change. As Goodman (2010) suggests, countries with liberal policies either do not consider immigration to be relevant to their policy making, or consider mandatory requirements for integration to be counterproductive. Countries like the Netherlands, France and the UK, which in Koopmans' et al. (2005) study were considered to not have cultural requirements for an individual to access citizenship, are now among the most demanding countries, which could be interpreted as a symptom of the purported "failure" of both multiculturalism and universalism. Such tendencies lend support to the argument that there is a trend towards treating citizenship as a reward for assimilation, again related to reinforcing the identitarian dimension of citizenship.

In my view, these developments in the citizenship policies of the Western European states challenge the liberalization/ convergence thesis, and lend support to my argument

about the increasingly identitarian conception of citizenship. Scholars increasingly agree that citizenship policies in Western European states are affected by multidirectional factors that range from liberalizing trends like *ius soli* provisions for second or third generation immigrants to restrictive tendencies like "thicker" integration tests (Vink 2013). Skepticism toward the pronouncements of postnationalism is further supported by the persistence of the differentiated treatment based on origin, such as the preferential naturalization conditions for people from Spanish-speaking Latin American countries in Spain, which in other aspects is considered a quite restrictive citizenship regime (Fitonella and La Barbera 2013). Is it possible to find support for the liberalization/ convergence thesis in another immigration environment with purportedly less exclusionary identities? Let us turn to the traditional immigration/ settler states with that question.

*5.2.1.2. Immigration/settler states.* The immigration/ settler countries, like Canada, Australia, and the United States, have always been considered to hold civic conceptions of nationhood. Their citizenship regimes are similar enough to consider the liberalization/ convergence hypothesis to be at least partially true in that it suggests that the similarity in policies is shaped by similar experiences of immigration pressures (Martin 2000). These countries are contrasted to Western Europe as much more accepting of immigration as part and parcel of national identity (van Reekum, Duyvendak, and Bertossi 2012). While it may not be wise to be overly optimistic about these countries' acceptance of migrants, there are indeed qualitative differences from the reluctant European countries of immigration.

One of the key differences between Western Europe and the settler states is that the latter actively encourage immigrants to naturalize (Bauböck, Ersbøll, Groenendijk and Waldrauch, 2006a, 2006b). Naturalization requirements are similar and relatively

manageable, provided you can get access to a status that puts you on the citizenship path, installing the legality of one's migration status as a core component of citizenship discourse and regulation (Aleinikoff 2000; Martin 2000). While it would be naïve to accept the official image of the settler states as fully neutral, considering the dominance of Anglo-Saxon language and culture, racism issues, and selectivity of migration, ethnic immigration has become a thing of the past (Joppke 2005). Canada is considered to be the closest there is to a true multicultural approach to citizenship. Australia has made a sharp turn since the 1970s by discarding the "White Australia" migration policy and introducing multicultural measures. Despite the symbolic content of the citizen's oath, the USA does not in reality mandate a naturalizing citizen to give up on their homeland citizenship, supported by a Supreme Court ruling that facilitated opening the way for dual citizenship (Aleinikoff 2000; Martin 2000).

However, contrary to postnationalist belief in the declining importance of citizenship due to the decoupling of rights and citizenship, the way the traditional immigration states challenge the liberalization/convergence approach is by reaffirmations of the primacy of citizenship. One of the classic signals was the 1996 Welfare Act in the USA which went against the postnationalist predictions and excluded permanent residents from certain social benefits, resulting in a heightened sense of vulnerability and a flurry of naturalization (Correa 2002; Martin 2002). Immigration has become one of the most contentious issues in the United States, thus reinforcing migrants' feelings of insecurity and prompting their pursuit of citizenship as the ultimate guarantee against deportation and a channel of participation in making such political decisions like the retrenchment of the relationship between rights and citizenship.

As far as identitarian concerns, the increased emphasis by certain societal groups on the primacy of the English language could be seen as a symptomatic development (Zollberg and Long 1999). The debates on citizenship, especially those that refer to the availability of dual citizenship as a facilitator of naturalization, often focus on questioning the loyalty of these dual citizens and lament the instrumental nature of their approach to host country citizenship (Martin 2000). A lot of scholarship on dual citizenship has been concentrated on the situation of various groups in the immigration countries, inquiring whether dual citizenship helps or hinders participation, and in which country (), and highlighting the acknowledgement of multiple identities by the transnational migrants. The perspective of the immigration states is not always benevolent in this regard, especially if the other culture is perceived as so different that true loyalty and identification with both of them is a zero sum game. This kind of logic is behind much of the movement towards the "thickening" civic integration requirements due to Europe's concern with third country migrants, particularly Muslim immigration. A potential for a similar reaction is evident in the settler countries as well, as evidenced by the introduction of the Australian citizenship test. The government introduced this test in an attempt to reassert the type of Australian identity promoted under the "White Australia" policy and portrayed it as a response to the combined factors of necessary labour immigration, global terrorism and the perceived failure of multiculturalism (Fozdar and Spittles 2009). The perception of the failure of multiculturalism seems to be a characteristic common to right-wing politicians both in Europe and in Australia, while a left-wing government would reassert its value and application (Tavan 2012). This harkens back to the scholars who suggested that partisanship should not be ignored in favour of national traditions when it comes to

explaining approaches to migration and citizenship, but for the purposes of this paper we need to note that multiculturalism does not remain unchallenged in immigration countries.

The traditional immigration/ settler countries are the classic locus of treating dual citizenship as a tool for immigrant incorporation and should in theory be the most neutral towards the identitarian dimension, however, the scholarship and the high-strung public debates help underline the fact that migrants' loyalty and identification with the host country is a major concern in dual citizenship (see e.g. Renshon 2005). By highlighting the close link between migration, citizenship, and national identity of the host state, even the traditional immigration countries suggest that we should treat the liberalization/convergence thesis with caution.

*5.2.2. Postcommunist states.*

If Western states have been seen as the epitome of postnationalist developments, then postcommunist states have been portrayed as their conceptual opposites. Central and Eastern Europe has been perceived as the "other" of the Western Europe, as the wildness which needs to be tamed (see papers in Korek 2007), and the first and foremost area of concern was the fear of ethnonationalism in the region. The conditionality of EU membership and the monitoring of various international organizations were aimed at ensuring minority rights in the region, with the hope that the West will have a positive effect and nudge CEE countries towards more civic policies. Taken as a whole, are citizenship policies in postcommunist countries indeed ethnonationalist, has there been a trend towards greater inclusion, and is there a difference between the postcommunist countries with a different degree of experiencing EU conditionality and concomitant normative pressure?

*5.2.2.1. Central and Eastern Europe.* Systematic comparison of dual citizenship policies in the region is hampered by a relative lack of large scale comparative studies. Instead, the bulk of the scholarship on this region has been in the form of singular case studies based on the expertise of the author on the history and politics of a particular country. A common trend in the study of citizenship in CEE is the attention to kin-state politics (Bauböck 2007). The attention received by different countries is disproportionate. By far the most popular object of study is Hungary and its minorities in the neighbouring countries, but similar kin-state politics have been observed between Romania and Moldova and between various Balkan states. The Baltic states of Estonia and Latvia have gotten a certain amount of attention due to their problems with the Russian minorities.

Even the larger volumes on CEE countries, like Bauböck, Perchinig, and Sievers (2009), tend to be mostly parallel studies of different countries. However, it is possible to glean the scholar's evaluation of the citizenship policy trends in the region. One the most influential sources of the evaluation of relative restrictiveness or inclusiveness of citizenship policy is Howard's (2006; 2009) study which found 8 new EU members to be restrictive and only 2 could be considered on the lower end of moderate (Bulgaria and Slovakia). Howard (2009) concludes that citizenship regulation in this region is restrictive, certainly more than in Western Europe. Howard's citizenship policy index is especially relevant for our purposes because it gives significant weight to the regulation of dual citizenship, more specifically, its availability for immigrants. Dumbravă (2007) extended the application of Howard's citizenship policy index to 16 postcommunist countries in the period of 1990s-2000s and found that, according to this model, 4 countries remained restrictive, 12 were at the lower end of the moderate, and only Moldova experienced a

move from restrictiveness to a medium regime, while Romania got even more restrictive in terms of dual citizenship. Overall there was little liberalization in the region except for some rules regarding citizenship of children. Based on these studies, Lithuania has always been the most restrictive CEE country along with Slovenia, but it cannot be considered an exception in the region, merely an end of the spectrum.

The scholars have tried to explain the restrictiveness of citizenship policies in this region by referring to the specifics of their historical circumstances, such as the changes in borders that do not match ethnic group locations, the struggles for independence, etc. (Howard 2009; Liebich 2000, 2009). In that sense, my research is not a radical departure from the previous scholarship, however, my contribution is to propose a unified understanding of these circumstances by conceptualizing them as concerns with stateness. Furthermore, I also contribute to the part of scholarship on CEE citizenship which emphasizes the way these countries can take advantage of EU integration for their own agenda. For the most part, this line of reasoning can be found in the well-developed inquiry into the relationship between ethnic minorities and their kin-states (Batory 2010; Csergő and Goldgeier 2004; Csergő and Goldgeier 2005; Fowler 2002; Iordachi 2004; Kemp 2006; Sievers 2009; Tóth 2003; Udrea 2014; Waterbury 2008). The Lithuanian case demonstrates that EU integration may be used subversively instead of expansively: faced with the impossibility of continuing the ethnonationalist citizenship regime due to the hegemony of the norm of nondiscrimination, this norm was dovetailed with stateness concerns rather than expansion of inclusivity. Perhaps Lithuania is more afraid of Russia than most other CEE countries which maintained their formal independence under their own communist regimes; nevertheless, it warns us against uncritical acceptance of the idea that the West

has a liberalizing effect on the East. Let us turn to the other concentric circle to which our case belongs – the former republics of the Soviet Union – for another set of examples of the importance of stateness for countries that have experienced Russian domination.

*5.2.2.2. Former Soviet Union.* The postcommunist region can be further split into those countries that belonged to the Soviet Union vs. those CEE countries that enjoyed at least nominal independence (discussed in the preceding section). Although the Baltic states are also ex-USSR countries, they are substantially different in that they are the only ones that enjoyed some independence during the 20th century. Therefore, since stateness is my central conceptual tool, it would seem to make sense to bracket the Baltic countries when talking about the former Soviet Union countries, due to the peculiar constellation of stateness in most countries which had experienced Russian colonization, but did not have previous stateness experience against which to contrast their postcolonial predicament. It is even more legitimate to treat the rest of the ex-USSR countries as postcolonial due to the role of Russian settlement as colonial elites during the times of Tsarist Russia and later as the main source of highly skilled labour during the Soviet times, especially in the Central Asian republics. Consequently, one of the main features of their post-independence situation was "accidental diasporas" (Brubaker 2000) of variously sized Russian minorities. In addition, the policy of Russification resulted in a situation where even a part of the country's titular nationals spoke Russian instead of their ethnic native language. It is not surprising that regulation of citizenship in this region became inexorably intertwined with the countries' relationship with Russia.

As only Russia became a Soviet Union successor state, the rest of the republics were not obligated to grant citizenship to all former USSR nationals living in their territory

(UNHCR 1993). The way states took advantage of this relative freedom of choice was directly related to the degree of stateness legacy they could claim. The Baltic states that had been independent in the interwar period were adamant to institute a qualitative difference between the descendants of interwar citizens and those who arrived as part of the foreign occupation (Barrington 1995, Gelazis 2003, Ziemele 2005). Lithuania opted for the same zero option as the rest of the republics (with the exception regarding Red Army officers discussed in Chapter 4) thanks to a relatively manageable size of the ethnic minority population. However, the much more demographically challenged Estonia and Latvia instituted highly ethnonationalist citizenship regimes, denying Russian settlers a chance at automatic citizenship (which Lithuania could afford to offer due to the relatively small size of the ethnic minorities) and requiring them to pass language and civic knowledge tests. Furthermore, additional restrictions were instituted to weed out Russian loyalists. For example, the Latvian 1994 Law on Citizenship listed the types of persons who would not be eligible for citizenship even if they fulfil the naturalization requirements, which included those who arrived to Latvia as Soviet Army officers (similar to the rule in Lithuania discussed in the previous chapter), those who had been working with KGB, those who have propagated communist totalitarian ideas and those who have "turned against the Republic of Latvia's independence, its democratic parliamentary state system or the existing state authority in Latvia, if such has been established by a court decree" (Gelazis 2003: 51-52). This is an archetypal example of how concerns with stateness affect citizenship regulation. Gelazis (2003: 53) also notes how Estonia adopted multiple provisions for the rights of non-citizens as a counterpart to the intention to maintain a restrictive ethnonationalist citizenship regime. This is an example of the decoupling of

rights and identity going in tandem with the reinforcement of the identitarian dimension of citizenship.

Mutual resentment between the titular Baltic populations who felt they were engaging in affirmative action, and the Russians who overnight fell from the position of a hegemon to a minority, has been somewhat mollified due to the pressure of the European institutions monitoring the progress and compliance with conditionality on the road of eurointegration, and although the citizenship regime retains its ethnonationalist characteristics, a large part of the Russian population has eventually gotten incorporated into the polity. Such direct incentive like membership conditionality was not available to the rest of the ex-USSR states. Therefore, despite the initial common starting point of granting citizenship to all permanent residents at the time of independence, the further development of citizenship regulation was to a large extent determined by the balance of the relationship between each state and Russia on the one hand, and the existence of a co-ethnic diaspora on the other hand. This dynamic is especially relevant to the question of dual citizenship conditions, as they directly applied to such disparate groups of people.

Makaryan (2006) analyzed the changes in citizenship laws of all 15 ex-USSR states and determined that they started out as relatively liberal and got more restrictive over time in terms of naturalization, especially since mid-1990s once the process of instituting independent lives of states was well established. He observed trends in increasing residency requirements and stricter demands in language tests, more countries took up testing the knowledge of the Constitution, and a minority even adopted history knowledge requirements. As he included the Baltic states in his analysis, we can see that the approach to citizenship regulation was not radically different among all the countries carrying the

legacy of Soviet rule and its main ingredient – experience of forcible suppression of ethnonationalism in favour of Russian hegemony. After independence, the majority of the postcommunist region could be characterized by a combination of mutually exacerbating nationalisms experienced by states engaged in internal nationalizing vs. states pursuing protective relationships with kin minorities in other states (Brubaker 2000).

Shevel (2009) offers a different perspective and argues in favour of recognizing variety in the citizenship regulation among the former Soviet republics. She evaluated the laws in the 15 countries and found 7 of them to be of the civic and 8 of an ethnic variety, the latter ranging from the indefinite preservation of a right to citizenship for descendants of ethnic Lithuanians who would choose to come settle in their ancestral homeland, to a waiver of some naturalization requirements, such as income in Belarus or residency and even language in Kyrgyzstan. Shevel (2009) explained the differences among countries by the degree of contestation over national identity rather than by international influence, lending support to my proposal of treating citizenship laws as the nationhood boundary maintenance regime. In this region, the boundary has been drawn mostly depending on the degree of threat perceived from the Russians, whether it be a threat to the nationhood or to the personal power of dictators, and, as Shevel (2009) suggests, more civic laws arise from the inability of some countries to subdue their Russian populations and assert a titular ethnonational identity.

A characteristic example of the vicissitudes of post-USSR dual citizenship issues and their power relationship with the factor of Russia can be found in Turkmenistan. In 2003, Turkmenistan announced the end of the dual citizenship treaty it had signed with Russia in 1993 and ordered all Russian dual citizens to make a choice of their citizenship

within a couple months or automatically become only Turkmen citizens (Durdiyeva 2003). This bold move followed the presidents Niyazov and Putin signing a lucrative deal on providing Turkmen gas to Russia and provoked resentment among Russian politicians for selling out their compatriots aboard in exchange for gas (Torbakov 2003). The Russian parliament Duma defied Putin's alleged agreement to the end of dual citizenship (he signed an agreement to stop granting it for new applicants (Eurasianet.org 2003)) and refused to ratify the cancellation of the 1993 treaty (Pannier 2003; Rejepova 2010; RFE/RL 2003; Torbakov 2003). Although the crackdown on dual passport holders subsided in 2004 with the retreat from exit visas (RFE/RL 2004), the ban on dual citizenship was enshrined in the Constitution, last updated in 2008, and, in 2010, the Turkmenistan president Berdimuhamedov picked up the efforts to finalize the enforcement of the ban on dual citizenship, preventing dual citizens from traveling abroad until they make a choice, using the introduction of biometric passports mandatory for international travel as the tool to ensure no one slips through the cracks (Fitzpatrick 2011; Rejepova 2010).

Critics consider the reasons behind this backlash against dual citizenship to be rooted in the desire to close off and control the society, both by preventing Turkmens from escaping abroad and by cracking down on the potentially influential Russian minority (IRIN 2003). The reported position of some of the high Turkmenistan officials that "Russia has already ceased to be a factor in Turkmen foreign policy" (Fitzpatrick 2011) can be seen as an echo of the notion behind my conceptualization of the role of stateness concerns in citizenship politics, namely, that dual citizenship regulations are strongly influenced by the relative inter-state vulnerability of countries in question.

A more thorough investigation of dual citizenship regulations and discourses in postcommunist countries would certainly be interesting, however, for the purposes of this paper we can make some interim conclusions. Looking at the region of which Lithuania is part, whether it be Central and Eastern European members of the EU or former Soviet Union states, we can state that the restrictiveness of the Lithuanian case of dual citizenship cannot be considered to be such an outlier as it appears to be when looking only at the citizenship theories. This conclusion points to the limited nature of citizenship theories that are derived solely relying on the experience of Western immigration countries. Some scholars may counteract my claim by saying that it is perfectly understandable that different citizenship theories would fit immigration vs. emigration countries. However, my overview of Western European trends shows that identitarian concerns are valid for both of these types, thus calling into question the stereotypical dichotomy between a civic West and an ethnonationalist East.

*5.2.3. East vs. West ≠ ethnic vs. civic?*

The ideas of EU conditionality and normative pressure have been predicated on the conception of a contrast between the more ethnic-oriented East and the more civic West. However, scholars have been increasingly challenging this distinctions and pointing out the preferential treatment of co-ethnics by countries like Germany, Italy, Spain, etc., and the double standards applied to postcommunist countries which the old EU members do not uphold themselves (Bauböck 2007, Jutila 2009). On the other hand, comparative studies have concluded that there indeed is a difference in the degree of restrictiveness between these two regions (Howard 2009, Ariely 2013). However, the prediction that EU conditionality would help liberalize postcommunist countries has not been fulfilled, as

most of them retain preferential policies towards their co-ethnics. Furthermore, Western states themselves are increasingly instituting "thicker" integration requirements for their migrants, thus finding ways to assert the mutuality of citizenship and national identity. In fact, scholars find evidence that the original conception of the ethnic-civic divide between the European countries themselves (keeping in mind that Germany was then relegated by Kohn (1945) to the "East") is still valid, and that Central and Eastern European countries like Poland and Czech Republic fall close to the middle of the possible ethnic-civic range, as opposed to the more civic countries like Belgium, Ireland, and Sweden, and more ethnic countries like Austria, Denmark and Greece (Koning 2011). Having reviewed the trends in citizenship policies in these two regions, we can conclude that the liberalization/ convergence thesis was premature, and that the strengthening of the identitarian dimension of citizenship is a more universal trend than one would expect based on the predictions of postnationalists. Let us expand the effort to establish the applicability of my theoretical proposals by looking beyond Europe. One of the reasons why it is legitimate to expect such applicability is precisely the fact that most of the non-European countries have in some form been affected by colonialism, therefore, the concerns with stateness that I identified as the key determinant of citizenship regulation should be even more relevant here. Although the limits of this thesis permit only a cursory overview, it is possible to establish certain tendencies.

*5.2.4. Latin America.*

Latin America[78] and postcommunist countries have been compared copiously in light of the waves of democratization, especially under the somewhat compromised

[78] I limit my analysis to Spanish and Portuguese speaking countries in Latin America and the Carribbean. According to Brøndsted Sejersen (2008), 80 percent of countries in the Caribbean allow dual citizenship.

heading of transitology. The classical study by Linz and Stepan (1996) posited that, due to the crystallization of national units in the 19th century, Latin American countries were not subject to stateness concerns which plagued the postcommunist countries. However, I suggest that we should not write off the role of citizenship as the stateness boundary maintenance mechanism in this region.

*5.2.4.1. A note on studying citizenship in this region.* When it comes to citizenship regulation, the comparability of CEE and Latin America becomes less straightforward, and citizenship studies of these two regions have scarcely been mutually engaged. Whereas Eastern European countries have mostly been studied with the eye on historical changes of regimes and borders and treatment of ethnic kin-minorities (see above), a large part of the studies of Latin American citizenship deals with questions of substantial citizenship rights and practices (as Yashar (2005: 32) put it, "the *content* rather than boundaries of citizenship in multiethnic settings"), indigenous minorities, and issues pertaining to emigration, especially the question of emigrant incorporation in host countries and the question of remittances (Albro 2010; Jones-Correa 1998, 2001a, 2001b, 2003; Escobar 2004, 2007; Fitzgerald 2009; Hooker 2005; Isotalo 2009; Portes, Escobar, and Radford 2007; Oboler 2006; Tulchin and Ruthenberg 2007; Yashar 2005). Part of it is unavoidable in the academia clustered along regional studies lines, but part of the different substantive orientation of regional scholars may be explained by the fact that legislation in most Latin American countries distinguishes between the legal status of nationality as belonging to a state in the eyes of the international community and that of citizenship as the exercise of

Most of these countries have permitted dual citizenship since independence (Jones-Correa 2001a). The confluence of the factors of colonial legacies, geography and migration patterns produces an especially conducive environment for dual citizenship, but lack of recent changes makes this region less relevant for the purposes of this dissertation.

political rights, whereas in the postcommunist world the concept of nationality has strong ethnic connotations and thus citizenship is the preferred term when speaking about the legal status.

In this dissertation I have used the term 'citizenship' to refer to the legal status of membership in a state, but in the analysis of Latin American countries, the terms 'citizenship' and 'nationality' are used interchangeably and refer to the more narrow conception of legal status as belonging to a state. Also, as a side note, for the purposes of this study, the status of Latin American countries as emigrant sending countries is more relevant than the questions of domestic citizenship regulations aimed directly at indigenous diversity. Although we can observe an interesting parallel between postcommunist countries' preoccupation with who has oppressed who at various points in history in formulating citizenship policies' and the tensions in the relationships between indigenous peoples, descendants of African slaves and of European immigrants in Latin America, the current salience of former oppressors' access to citizenship is arguably not the same in these two regions. In light of economic differences, the possibility to migrate to the former metropolis for better opportunities is widely appreciated in numerous Latin American countries and ads to the attractiveness of the availability of dual citizenship.

It is important to appreciate the specificity of the background which has shaped their citizenship regulations, considering the profound changes in terms of migration flows that Latin American countries have experienced throughout the history of their statehood. While the foundations of many of these countries' self-image are inseparable from large-scale European immigration (admittedly, this is more salient in the countries of the Southern cone), it is reasonable to say that today's concerns are oriented toward large scale

emigration. Depending on the time-horizon assumed by a researcher, it is possible to over- or under-estimate the effects of one of these phenomena and the crucial role they both play in the constellations of the conception of nationhood and citizenship. In this study I established the importance of taking into account the prolonged time-horizon of relations with other countries and nations when interpreting developments in citizenship regulation. Therefore, comparing the findings of this study, which question the hypothesis of convergence towards liberalization, with the situation in Latin America, which has a reputation for liberal policies of citizenship, can be especially illuminating.

*5.2.4.2. Dual citizenship trends in Latin America.* A majority of Latin America forms the largest block of countries in the world that follow *ius soli* policies in citizenship attribution (Feere 2010), opening up greater likelihood for dual citizenship gained by birth. According to various cross-national studies, all countries in Latin America allow some form of dual citizenship, except for Cuba.[79] The latter's lack of democratic credentials and a contentious relationship with major emigration destinations render the premises of the mainstream liberalization/convergence hypothesis inapplicable, whereas Latin America and the Caribbean, on average, has held a higher score in the EUI democracy index than Central and Eastern Europe, so we should expect it to be even closer to the predictions of the liberalization/convergence hypothesis. However, as I have argued throughout this study, it is important to deconstruct the notion of availability of dual citizenship and take a closer look at its constituent parts, instead of presuming this permissiveness to be an overall indicator of convergence towards liberalization. Earlier I discussed the insistence of Howard (2009) that dual citizenship for immigrants is the true litmus test of liberalization

[79] http://www.centrorisorse.org/nationality-in-american-constitutions.html, Boll 2007, Escobar 2007: 51, Jones-Correa 2001a.

and pointed out that, even if a country allows dual citizenship for immigrants, it can still express a rationale that is very much oriented towards assimilation of immigrants rather than an intentional liberal approach to migrant integration, as evidenced by the thickening naturalization requirements in Europe, as the contents of what an immigrant is expected to assimilate into is inseparable from the dominant conception of the nationhood.

The notion of liberalization is inseparable from the imperative of nondiscrimination based on descent. The findings of the analysis of the Lithuanian case show that even the apparent symmetry between dual citizenship availability for emigrants and for immigrants does not necessarily indicate liberalization, as this symmetry is not sustained in the wider context of citizenship regulation, from the difference in residence requirements to the expressive guarantee of the right of every Lithuanian to retain the right to regain citizenship and settle in Lithuania enshrined in the Constitution. There is no directly comparable counterpart to Lithuania in the Latin American region, since there has been no instance of a similar backlash against previously available dual citizenship. However, it is possible to take an overarching comparative look at the regulation of dual citizenship broken down into its constituent parts relating to emigrants and immigrants and thus evaluate whether Latin America can provide support or, to the contrary, question the liberalization/convergence hypothesis, and help illuminate the findings of the Lithuanian case.

*5.2.4.3. Identitarian dimensions of dual citizenship in Latin America.* Having reviewed the citizenship regulation in Latin American countries[80], I suggest that their

[80] Information compiled by triangulating several sources: Jones-Correa 2001a; Boll 2007; Brøndsted Sejersen 2008, Escobar 2007; United States Office of Personnel Management Investigative Services. *Citizenship Laws of the World*. March 2001 <http://www.opm.gov/extra/investigate/IS-01.pdf> [last accessed April 22, 2012]; and translations of pertinent country legislation available on the websites of

liberal reputation may be deserved overall, but needs to be qualified, just as we have to do in the analysis of European countries. Although all of these countries afford a certain degree of the possibility of dual citizenship, the regulations are not equally liberal. The strongest mandate for dual citizenship comes from acquiring it by birth, while voluntary acquisition of another nationality is considered normatively lower. It is true that the majority of these countries allow dual citizenship both for emigrants and immigrants, however, none of them provide a fully symmetrical treatment to emigrants and to naturalizing immigrants.

First of all, in most of these countries a citizen by birth cannot be deprived of his or her nationality, but naturalized citizens can be deprived of their citizenship for various reasons, from domicile abroad for a prolonged time (El Salvador), to presenting claims to the status of a foreigner (Mexico), to acquiring another nationality through naturalization (Paraguay), to crimes against existence and security of the state (Columbia) (see country laws and Constitutions in Boll 2007). Second, dual nationals are often prevented from occupying various political or public service posts. Third, in a number of countries only some of the naturalizing immigrants can retain their nationality of origin, a provision that is based on the principle of reciprocity between countries and in practice equals a preferential treatment of persons from culturally similar countries.

One of the most manifest characteristics common to the citizenship regulations in the countries of this region is a special treatment of the common Iberian cultural pool which can be traced in the naturalization requirements for more than a century and buttresses my

Immigration and Refugee Board of Canada <http://www.irb-cisr.gc.ca:8080/Publications/index_e.aspx> [last accessed April 22, 2012], the Article Directory http://www.centrorisorse.org/nationality-in-american-constitutions.html [last accessed April 22, 2012], and country government websites.

argument of the fundamentality of the identitarian dimension of citizenship. While we can find a similar logic of cultural affinity playing a role in European examples of citizenship acquisition rules, the mutual preferential treatment of Latin citizens is of unprecedented proportions. All the countries in Latin America (as well as Spain and Portugal) provide facilitated naturalization or even a possibility to acquire citizenship by declaration to citizens of either some or all of the other countries of Iberian pedigree. The central role of Spanish/Portuguese heritage is also evident in the naturalization requirements that prescribe a test of language and knowledge of culture and history (Panama, Costa Rica, Mexico since 1993). However, the proclaimed equality and fraternity of Latin American peoples does not translate to practice, as is evident, for example, in the discrimination against Central Americans in Mexico, which also is one of the countries, along with Panama and Nicaragua, that require naturalizing foreigners from non-treaty countries to renounce their nationality of origin (Base de Datos Políticos de las Américas 1998).

*5.2.4.4. Citizenship and stateness.* The citizenship legislation reforms that brought about the often symmetrical availability of dual citizenship have often taken place in the context of larger Constitutional reforms and should be seen as both a part of a broader attempt to improve the institutional underpinnings of the state, fight exclusion and increase an appreciation for ethnic diversity, and the incorporation of international agreements on human rights and an effort to increase democratic legitimacy of post-authoritarian governments (see Hooker 2005; Hunt 2006; Levitt and de la Dehesa 2003). In that sense, the developments in Latin America support my notion of the continuing relevance of the relationship between citizenship and stateness. As Albro (2010: 74) proclaims, "successive expansions of citizenship rights being a principal feature of consecutive national projects

dedicated to the reinvention of the country", although not all Latin American countries stated is as boldly as the preamble of the Bolivian 2009 Constitution that claimed to have "left behind our colonial, republican, and neoliberal past" and "refound Bolivia" (Figueroa 2011). It is interesting to note in this context that, for example, Article 96 of the 1991 Constitution of Columbia provides for dual nationality for indigenous peoples who share the border (Article 96), or that the carving up of electoral legislation puts Colombians abroad in the same category as ethnoracial and political minorities (Escobar 2007: 66; see Van Cott 2000 on the normatively charged Constitutional reform in Columbia). Overall, the concerns with stateness in this region are related more with their internal challenges than with some major external threat like in postcommunist countries; however, Latin America shows that colonial experiences can be expressed through various channels, but my proposition of the importance of postcolonial status for the approach to citizenship remains valid, even if on a more removed level.

*5.2.3.5. Dual citizenship and migration.* Even if the extension of dual citizenship is often associated with wider democratization, such as the inclusion of commitment to dual citizenship in the Dominican Republic's 1994 "Pact for Democracy" (Levitt and de la Dehesa 2003: 596), one cannot overlook the fact that the discourse that surrounds the discussions pertaining to dual nationality overwhelmingly centers around emigration. The legislation itself does not shy away from acknowledging the reasoning behind it, such as the paragraph in the Constitution of the Dominican Republic, Article 20, which states that "The public authorities apply special policies to preserve and strengthen the bonds of the Dominican nation to its own nationals abroad, with the ultimate aim of achieving greater

integration."[81] And although the legislation of the Dominican Republic appears to be liberal with its permission of dual citizenship and *ius soli*, it has to be interpreted by taking into account the 2004 reforms which expanded the definition of persons "in transit," whose children are not eligible for birthright citizenship, to include anyone who is not a legal resident. Since 2007 the administrative practices have been to apply this law retroactively to the numerous population of Haitian descent in the Dominican Republic (Fieser 2011). Representatives of the Dominican government react defiantly to international concerns about rendering Haitians stateless, point out that the *ius sanguinis* laws of Haiti ensure their entitlement to a nationality, are backed up by their Supreme Court, and proclaim that the selective denial of birthright citizenship is necessary to fight illegal migration. Another case that could have potential for the exploration of the interaction between migration and citizenship policies could be Colombia, in that the country which was a pioneer in liberal symmetrical citizenship regulations in the region with its 1991 Constitution is one of the few Latin American countries that do not follow *ius soli* policies.

The bulk of the comparative studies on dual citizenship in Latin American cases are mostly concerned with the effect it has on immigrant incorporation in the USA and the transnational practices and contributions to the country of origin by the emigrants (Barry 2006; Graham 2001; Guarnizo 1998; Guarnizo and Roach 1999; Jones-Correa 2001a, 2001b; Leblang 2013). In fact, a part of the support for the mainstream hypothesis that posits the beneficial effect on immigrant incorporation, such as a statistically significant increase in naturalization rates when dual citizenship is available, comes from research on

[81] The Constitution of the Dominican Republic can be found at http://www.jmarcano.com/mipais/politicos/title1.html.

Latin American migrants (e.g. Jones-Correa 2001a, 2001b). For the purposes of this study, we are primarily concerned with the antecedents of dual citizenship legislation.

A brief overview of the research reveals that the question of the country's relationship with its emigrants is indeed the major determinant in deciding the policies of dual citizenship, although different authors emphasize different factors that shape this causal relationship. The story of dual citizenship in Latin American countries follows roughly along the lines of the mainstream reasoning pertaining to sending countries, attributing its spread to the processes of democratization that, on the one hand, prompt states to shore up their democratic credentials in the eyes of their population and the international scene, and on the other hand, actualize the need to recruit voters and campaign contributors from the point of view of political elites and the desire to pressure for an availability of such influence from the point of view of emigrants.

The other side of the often-told story is the socioeconomic salience of emigration, both the demographic imperatives of a large number of co-nationals leaving and the desire to harness their economic potential to benefit the development of the state of origin through a stabile flow of remittances and investments, or, as Leblang (2013) put it, "harnessing the diaspora". Different authors attribute different weight to these constituent parts in different and sometimes in the same cases, which is a reminded of the importance of process tracing that we discussed in the introduction for fleshing out a grounded understanding of the complex combinations of factors that produce the causal relationship in any specific case.

*5.2.3.6. Mexico: a case note.* The case of Mexico is probably the most researched and the most illuminating to address in the confines of this chapter. In one of the key reference studies on Latin American dual citizenship, Jones-Correa (2001b: 1000)

distinguishes institutionalization of dual citizenship "from above" and "from below", claiming that the earliest reforms were initiated by the states' governments, but later instances of dual citizenship recognition could come either from the emigrant campaigning and pressure or from the state. Escobar (2007) adds the importance of the changes in the migrant community situation in the receiving countries and of the rapid diffusion and emulation among the countries in this region. According to Escobar (2007: 44), the variations in the timing, sequence and form of dual citizenship legislation result from the combination of the demographic and socioeconomic characteristics of migration and the political system of the country seen both in a broader historical context and within the timeframe of contemporary domestic political competition. Smith (2003a, 2003b) concurs that the initial impetus in the Mexican case came from the state, but argues that the migrants were able to carve out their own diasporic space at subsequent stages of developments in citizenship regulation based on the relative weight of changes in the global system, domestic politics, and migrant actions, which varies over time.

The approach of the Mexican state could be considered to have been expressed by, for example, its diplomat Gutiérrez (1999), who noted the role of the anti-immigrant developments, such as the California Proposition 187 and the welfare reform, in prompting the state to take a stance of solidarity with its co-nationals abroad by providing the possibility to have dual citizenship and thus reducing the costs of their naturalizing in the USA. We have to acknowledge the importance of the international, or, rather, the inter-state dimension in shaping dual citizenship regulations. Escobar (2007: 54, 69) points out that the concern with anti-immigrant tendencies in the USA and concomitant migrant mobilization prompted not only Mexico, but also Brazil, Peru, Guatemala in the 1990s, and

Honduras, Bolivia and Chile in the 2000s to allow dual citizenship, thus acting as a homogenizing factor across a variety of historical nationhood traditions. This once again demonstrates the close relationship between the case of Latin America and the mainstream theories that posit the sending countries' policies as reactions to the behavior of immigrant-receiving countries. As Axtell (2009: 17) notes, "a less utopian view of dual citizenship has begun to form, characterized in equal parts by shades of *laissez faire* tolerance within the U.S., *realpolitik* rule changes at home and abroad, moments of private creativity and constraint, and stammers of nativism."

An interesting argument can be made based on the findings of the analysis of the Lithuanian case that neither purely instrumental calculations nor purely identitarian concerns with nationhood and its historical and contemporary context in relation to migration are sufficient determinants of citizenship policy; rather, the crucial factor to look at is how one state relates to others. This is what Fitzgerald (2005) does in his study of Mexico's nationality law, claiming it to be "a case where policy-makers' primary goal is not to redraw borders or call home a 'diaspora', but rather to use nationality law as a tool to moderate the political and economic asymmetry in relationships with migrants' countries of origin and destination," informed by both emigration and a smaller but politically significant immigration (Fitzgerald 2005: 173). He demonstrates how certain politically charged experiences of immigration can color dual citizenship debates to the point where they become more salient than the overwhelming demographic weight of emigration, similar to what we have seen happening in the Baltic states in relation to ethnic descendants of former aggressors, and attributes it to Mexico's geopolitical vulnerability. He also recounts the deliberate usage of references to international law, emphasizing the strategic

selectivity of the Mexican government when choosing which international lessons to incorporate into their national regulations, and points out that the lack of possibility to claim common ethnic descent that is characteristic of all historical immigration countries does not equal shying away from claims about nationhood which still manage to distinguish citizens by descent from naturalized citizens (Fitzgerald 2005: 181-182, 186). In this view, the case of Mexico offers support for the argument that posits the importance of international law impact on dual nationality policy.

Arguments presented by Fitzgerald (2005) parallel my findings in the Lithuanian case of the state concerns that are not as emphasized in the public discourse as the identitarian questions, but nevertheless play an important role in shaping the end result of citizenship regulation. The Mexican case is illuminating in the context of this dissertation, as its citizenship regulations are consciously shaped by both experiences of immigration and emigration. It speaks to the Lithuanian case in that, though emigration in both cases is more substantial than immigration and thus the discourse on the role and impact of dual citizenship is shaped mostly in reference to emigrants, the historical concerns relating to representatives of potentially hostile nations and geopolitical considerations have not been purged from citizenship legislation. The difference is that in the Mexican case the asymmetry between dual citizenship for emigrants and immigrants has not been blocked by judicial developments like it was in Lithuania. One can also appreciate the historical parallels in the development of migration dynamics between the Mexican-U.S.A. and Lithuanian-E.U. migration systems and the long-term popularity of nationalist ideologies. The divergence occurs with Lithuania's entry into the European Union, which enables the free migratory movements and delegitimizes preferential treatment of co-ethnics. Without

a comparable process tracing of the Mexican case it is not possible to make definitive statements, but the cursory comparison suggests that the emphasis on the normative constraints placed on the Lithuanian state's abilities to manipulate its citizenship which were not imposed on Mexico does have weight as a plausible causal explanation of the counterintuitive outcome of the Lithuanian case, considering that both states experienced the processes that deterritorialize the nation, but not the normative constraints on dovetailing this deterritorialization with dual citizenship provisions.

Compared to the attitude towards dual citizenship that was prevalent until the end of the twentieth century, international relations are still a very important dimension of problematizing dual citizenship, but on a more collective level rather than the question of a given individual's conflicting allegiance and law applicability. When dual nationals become a number to be reckoned with, they can become *en masse* symbols of relations between states, such as Lithuania's preoccupation with former occupiers or Latin American countries' concern about the possibility to influence U.S. politics. However, the majority of cases of politicization of dual citizenship in Latin America has occurred in the context of elections, pointing towards domestic political developments as the main axis of politicization of dual nationality. Besides numerous cases of electoral contestation of Mexican-Americans, an example can be found in the resonance caused in Nicaragua by the case of the presidential candidate who was prevented from running in the election due to having acquired Italian citizenship through marriage and thus considered to have lost his Nicaraguan citizenship. The Supreme Court backed him, yet the administrative authorities insisted on following the letter of the law which forbade dual citizenship.[82] The public

[82] Alvaro José González Robelo v. Nicaragua, Case 12.144, Report No. 25/01, OEA/Ser.L/V/II.111 Doc. 20 rev. at 443 (2000). [REPORT Nº 25/01, CASE 12.144, ALVARO JOSÉ ROBELO GONZÁLEZ,

debate was interlaced with nationalistic commentary about a descent-based conception of nationhood (Esquivel 2000). The legislation was changed by the 2000 Constitutional amendment which stipulated that Nicaraguans by birth will not lose their nationality in case of acquiring another one.

In sum, an overview of Latin American nationality regulations confirms the importance of taking into account the long time-horizon view of the relationship between a country's history, statehood, migration profile, and access to citizenship. Such closer examination reveals cracks in the apparent symmetry of immigrant and emigrant treatment that echo the conclusions of the previous section pertaining to the persisting relationship between citizenship and nationhood refracted through the issue of migration, producing its own brand of identity politics.

*5.2.5. Asia.*

In contrast to Latin America where all but one country exhibit a more or less permissive attitude towards dual citizenship, Asia is the region with the least permissiveness towards dual citizenship according to Brøndsted Sejersen (2008). Arguably, she did not include Africa in her analysis, but at least in comparison to Europe and the Americas, Asia presents a different context and thus can help elucidate the factors relating to a less favorable attitude towards migration in general and dual citizenship in particular (Asia hosts the largest percentage of the world's stateless persons (IRIN 2011)). In fact, this region presents some of the rare examples of actual backlash against previously allowed dual citizenship, such as the 1955 declaration by China that it will no longer recognize dual citizenship, or the institution of an explicit prohibition of dual citizenship

NICARAGUA, March 5, 2001]. University of Minnesota Human Rights Library. Retrieved April 20, 2012 (http://www1.umn.edu/humanrts/cases/25-01.html).

in 1985 in Japanese citizenship legislation, or the breakdown of the Mongolia-Soviet Union agreement on dual citizenship after the fall of communist regimes. An additional factor, the relatively small ratio of migrant population vs. native citizens in the East Asian countries (Akaha and Vassilieva 2005) presents a situation comparable to our case study, where issues of emigration and nationalism are much more pronounced than those of immigrant integration and incorporation, although the latter questions are carving their way into the public discourse in light of the fact that most Asian countries are both migrant-sending and receiving countries (Asis and Piper 2008: 425-426). Developments in citizenship regulation in this region cannot be understood without taking into account the wider historical context, namely, the initiation into the West-dominated international system, the legacies of colonialism and postcolonial struggles, and the Cold-War constellations, as well as their aftermath. In that sense, Asia is an unexpectedly fitting counterpoint for the inquiry of the comparative implications of the findings of the Lithuanian case, especially in terms of how the legacies of domination and ideological juxtapositions color subsequent articulations of nationhood and of state interests.

I overview the main characteristics of citizenship regulation in Asia and proceed to conduct a more in-depth case study of South Korea in order to ascertain the comparative purchase of the theoretical propositions that I have formulated – the reinforcement of the identitarian dimension when rights get decoupled from citizenship and the role of postcolonial legacies as underlying the concerns with stateness. I limit the analysis in this section by excluding island countries in the Oceania for reasons similar to excluding the Caribbean in the previous section, and by focusing on the countries in East, South, Northeast and Southeast Asia. The Central Asian countries of ex-USSR comprise a

separate cluster for the purpose of our grouping, and the Middle Eastern countries do not lend themselves to the liberalization/convergence hypothesis, because the only democracy in the region is Israel. The latter's citizenship policies reflect the complexities of Jewish experiences and cannot be adequately treated within the confines of this study. The political regime variety in Asia is especially great, ranging from full democracies South Korea and Japan, to "flawed democracies" like India, Indonesia, Malaysia, Philippines, and Taiwan, to "hybrid regimes" like Singapore and Sri Lanka, to autocratic states (EUI 2012). Discussions of liberalization/ convergence hypothesis are mostly relevant in the context of democracies, however, examples from a varied spectrum of countries helps illustrate the main features of citizenship discourse in Asia.

*5.2.5.1. The key characteristics of citizenship politics in Asia.* If we continue to subscribe to the notion that citizenship policies are inseparable from migration issues, the characteristics of migration in Asia help highlight the specificity of this region. As Hugo (2006) emphasizes, the main factors can be summarized as the three D's: demographics, development, and democracy. More specifically, the more developed Asian countries experience the need for immigration due to the aging society and a need for labour, which stands in tension with mononationalist conceptions of nationhood and statehood (see e.g. He 1998 on the assimilationist stance of states towards minorities in East Asia). The ability to deal with the latter is inversely proportionate to the degree of democracy in a regime due to human rights concerns. Last, but not least, countries across the political regime spectrum can be characterized as "developmental states" which emphasize the role of the state in pursuing economic development under elite leadership and call upon their populations to make whatever sacrifices necessary in order to promote this vision, including certain

aspects of democracy and human rights (Evans 1995; Johnson 1982; Vu 2007; White 1988). Let us attempt to map the Asian experience onto the conceptual propositions developed so far in this paper.

*5.2.5.1.1. Instrumental vs. identitarian dimensions of citizenship*. Taking into consideration the variety of political regimes in Asia, the primacy of the state interests and the precariousness of migrant status, one difference becomes evident: a relative lack of the decoupling of rights and citizenship based on human rights that served as the basis for the liberalization/ convergence thesis in Europe. Therefore, the applicability of the proposition that the identitarian dimension becomes the primary content of citizenship once it is decoupled from rights is questionable. However, this difference allows us to revisit the tensions between the instrumental and identitarian dimensions of citizenship that are flanked by international pressures. In Asian states, this tension is refracted through the developmentalist orientation of the states, where the question of access to citizenship and, crucially, the availability of dual citizenship, is caught between the need to attract the most economically desirable migrants and the need to deal with co-ethnic diaspora on the one hand and national minorities within the state's borders on the other hand. In the context of globalization, a developmentalist state adopts an especially aggressive stance in the pursuit of the global talent, while facing contradictory challenges of human rights norms from both international pressures and domestic activist organizations (Ball and Piper 2002). Thus, it is still possible to tentatively map the vector of the liberalization/convergence hypothesis onto a developmentalist orientation, but we should not expect the same results. Authoritarian countries like Brunei have no qualms about asking "to protect the supremacy of the Bruneian identity and accept the Malay concept of the Sultanate" (Shahminan 2012)

and "sacrifice, commitment and a high spirit of patriotism in presenting their undivided loyalty to king, race and country" (Ubaidillah and Bandar 2010) of their citizens, and yet want to give special consideration to those who have economically valuable professional skills (Finaz, Han, and Bandar 2008; Rosli and Bandar 2008). For countries that at least somewhat aspire to be considered democratic, it is not so simple.

At first glance, the utilitarian dimension seems to dominate the citizenship regulations in this region. In order to get a competitive edge, states are willing to open the access to citizenship for those migrants who are perceived as economically beneficial. Tadai (2009) hypothesizes that state demand for financial and human capital is a strong predictor of permissiveness towards dual citizenship, but is qualified by political factors such as regime type. However, the need for financial and human capital is almost universal, although there is great variety in the actual constellations of citizenship rules both among the authoritarian and the democratic states.

Sri Lanka, one of the few countries that treat dual citizenship symmetrically (a key indicator of the liberalization thesis), was a pioneer introducing the legislation in 1987. However, that does not mean we can interpret this symmetry as liberalization in a straightforward sense, since the eligibility for dual citizenship and engagement with diaspora in general was explicitly tied to material considerations. Dual citizenship has been consistently approached from a utilitarian perspective, from Bandaranaike's attempt to tax Sri Lankan expatriates in the 1970s (Tilak, n.d.) to the Central Bank's explicit reliance on diaspora for foreign reserves in the aftermath of the world financial crisis in 2009 (Samaraweera 2009). Applicants are subjected to high fees and strict screening and can be deprived of the nationality at any time if officials deem their continuing possession of

citizenship to not be of benefit to Sri Lanka.[83] In 2011, the dependence on the administration's judgment of whether the person in question "may contribute to the socio-economic development of Sri Lanka" (Embassy of Sri Lanka in Netherlands, n.d.) culminated in a suspension of dual citizenship application processing and a threat of revision of existing dual citizens due to the policy not producing desired results and benefits to the country (Berenger 2011, David 2011).

The interplay between utilitarian and identitarian dimensions is evident in the legislative changes in two of the largest emigrant sending countries, namely, those in Philippines in 2003 and India in 2005. Philippines have recently become the top labor sending country in the world (Asis and Piper 2008) and have become somewhat of the model of remittances-seeking emigration country in migration research. Furthermore, it can be seen as a model for the success in ensuring the less tangible but still coveted identification with the country of origin, as evident in the outstanding growth of the percentage of Filipinos who claim their nationality has become more important to them (Inoguchi and Blondel 2008: 83-86).

In 2003, India passed legislation establishing the status of a Overseas Citizens of India, which ultimately did not provide a full-fledged citizenship status and formulated the OCI regulations more in line with the aforementioned Turkish "pink cards" or Polish card. Although the status of an Overseas Citizen of India does not provide political rights, it solves the practical issues of transborder life, such as travel and property rights, serving, as some overseas Indians acknowledge, as a "life-long visa" (Kulkarni

[83] Sri Lankan Government. 1987 and 1993. "CITIZENSHIP." *www.lawnet.lk* // http://www.lawnet.lk/sec_process.php?chapterid=1981Y10V248C&sectionno=19&title=CITIZENSHIP&path=5.

2008). We can juxtapose the low levels of foreign direct investment by non-resident Indians until 2003 (Chaturvedi 2005: 147-148) and the fact that India is now the country that receives the largest amount of remittances in the world[84]. Perhaps this shows that both the motivation of increasing remittances as the underlying motive for seeking out a relationship between the state and its diaspora, and the reasoning that the push for dual citizenship places a premium not on political rights but on greater convenience of transnational life, are substantiated.

Overall, there is a clear tendency in Asian states to include preferential provisions for economically beneficial citizens. The global race for talent extends beyond the borders of Asia, however, the unabashed developmentalist orientation of many of these states allows us to apprieciate the ongoing relevance of citizenship status if it goes with some other desirable characteristic. Economic potential has come to stand next to co-ethnicity as one of the key determinants of access to citizenship. Yet, utilitarian considerations are in constant tension with demography and identity.

*5.2.5.1.2. Demography and nationhood*. The utilitarian approach marks a divergence between a continuously essentialist and homogenizing discourse on national identity and nationhood on the one hand and an increasingly instrumental citizenship-migration policy nexus on the other (Aguilar 1999: 329-330). Questions of loyalty to the nation-state and emphasis on preserving an ethnically defined national identity and culture play a large role in the discourse on dual citizenship in countries where it is explicitly forbidden, from Malaysia to Mongolia to Indonesia. One of the main reasons why the question is approached at all is demographic pressures. Although different Asian countries

[84] The World Bank. 2011. "Migration and Remittances Factbook 2011." <http://siteresources.worldbank.org/INTLAC/Resources/Factbook2011-Ebook.pdf>

experience very different birth rates, both in the cases where international marriages are supported by the state to compensate for a low birth rate, and in countries that have rapidly growing populations, the main pressure on citizenship regulation comes from international marriages and concerns foreign spouses and children born in mixed-citizenship families, prompting NGO pressure to ensure human rights of abused spouses and state efforts to integrate and accommodate multicultural families (Chung and Kim 2012; Jones 2008; Kim and Oh 2011; Yeoh, Leng and Dung 2013). The migration flows in this region and especially their genderization have become one of the most important factors in citizenship regulation development. Later in this chapter I discuss in more detail the case of South Korea to analyze the particular effects of these factors, but they are relevant in other countries of the region as well.

Aligning citizenship regulation with gender rights has been a large part of any changes seen in this region, even if it starts from a low baseline. The 2006 change in legislation that instituted the possibility for Indonesian children who gain dual citizenship by birth to keep both citizenships until they have to choose at a certain age was touted as revolutionary and a huge step forward (Winarnita 2008). In contrast, that kind of policy is considered relatively restrictive in numerous countries on the other side of the globe, and even among some of the participants of the public discourse in the two Asian democracies – Japan and South Korea. However, the steps towards greater gender equality in citizenship legislation were taken in Japan only in 2008 after the Supreme Court ruled the different citizenship attribution based on parents' marriage status to be unConstitutional, two years later than in Indonesia. In other words, a conservative outlook on citizenship is not automatically counteracted by the degree of democracy. On the other hand, being able to

claim the title of democracy renders a state more vulnerable to charges related to human rights, one of the main sources of increasing attention to gender equality in citizenship legislation. However, while a democratic government may be more sensitive to human rights claims, it is also more sensitive to the popular opinion, a more immediate indicator of the prevalent conceptions of nationhood and priorities related to citizenship. The public discourse on dual citizenship in Japan can be an example of the Scylla and Charybdis of international human rights, and increasing internationalization of society through channels like international marriages, vs. restrictive public opinion and ethnonationalist identity of the nation-state.

Following the 2008 gender-related amendments to the Nationality law and the reaction to a Nobel-prize winner who had renounced his Japanese citizenship in favor of USA, a member of parliament proposed to allow dual citizenship with countries that permit it for most people (except public officials), as long as the dual citizens report it. He argued for its usefulness for "securing necessary human resources" and bringing legislation closer to reality, seeing as in practice a majority of Japanese who are supposed to choose one of two citizenships at majority[85] did not comply, and the government did not enforce this requirement, resulting in a relative loss for an honest minority (Matsutani 2009). This proposal caused heated debates (see e.g. Assogba 2009; Kamiya 2009; Matsutani 2009). Some wanted to allow dual citizenship as a way to deal with the realities of globalization and its effects on Japanese society, first and foremost international families. Opponents cast it as a threat to national unity (or, more boldly stated, ethnic homogeneity) and raised the specter of bogus family claims and European-style immigrant integration failures.

[85] Japanese Ministry of Justice. 1998-2006. "The Choice of Nationality." www.moj.go.jp // http://www.moj.go.jp/ENGLISH/information/tcon-01.html

Events of European scale are unlikely, since the proportion of migrants in Japanese population is relatively small, but the perception of their threat to national identity is very acute, and looms large in the policy discourse.

The objective demographical need for immigration is acknowledged by state officials within the developmentalist framework. The various editions of the "Basic Plan for Immigration Control" periodically updated by the Ministry of Justice (2005a) reiterates those needs: "from the viewpoint of enhancing the international competitiveness of Japan, there is special need to welcome those foreign nationals who are vital to Japanese society such as highly-skilled workers who have world-class specialized knowledge or technical skills". However, as a frequent critic Arudou (2009) remarks, "the prospect of Japan's decimation was no match for the fear of the foreign element". Japanese politicians continuously struggle to limit potential settlement immigration and exhibit a preference for employing local underemployed population, such as women and elderly, and foreigners of Japanese origin (Arudou 2007). In fact, the subsequent renewals of the official statement on migration policy by the Ministry of Justice (2005b) explicitly acknowledge the immutability of the main objectives set in 1992 – "the promotion of smooth exchanges of personnel" and "measures against illegal foreign workers" – and denounces large scale immigration as unrealistic, "if you trace back the history of Japanese society and give thought to the Japanese people's perception of society, culture and their sensitivity." In the 2010 edition of the immigration policy, the Ministry of Justice acknowledged:

> Today, against the backdrop of a serious decline in the population as a result of the declining birthrate and the aging of our society, we are faced with the challenge of maintaining the vitality of Japanese society and, in the midst of the dramatic economic growth of the countries in the Asian region, in terms of incorporating the vitality of the region into

> Japan, it is required that the acceptance of foreign nationals who are needed by Japanese society is carried out even more proactively.

However, this does not equal unconditional acceptance of even beneficial foreigners, and the negativity towards dual citizenship is one of the best indicators of this weary attitude. In fact, the relationship between Japanese citizenship regulation and international norms has been used in favour of restrictiveness. For example, dual citizenship was expressly prohibited in the 1985 Law on Nationality in tandem with preparations for signing the U.N. Convention on Elimination of All Forms of Discrimination Against Women, specifically to counteract its potential effects on expansion of dual citizenship (Murazumi 2000; Gurowitz 2006: 318). Thus, until today, the legislative and administrative changes to regulation of migration in Japan centers on being able to track, police, control migrants (Burgess 2009). In the end the availability of dual citizenship was not expanded, due to the combination of a popular backlash stemming from the prevalent understanding of Japan as a homogenous nation-state (see Chung 2010 on the struggles of second-generation Koreans in Japan) and of migrants as a threat to the public, and the official position of the government that dual citizenship presents a risk when the two state's interests are at odds (Arudou 2003; Burgess 2007; Burgess 2009; Ito 2011; The Ministry of Justice 2005a). The same Supreme Court whose ruling led to the expansion of gender equality has ruled that public authority can only be exercised by Japanese nationals (The Japan Times 2005). Japan is still very much the state of the Japanese nation, and the actions committed by the government in relation to colonialism, such as the unilateral revoking of citizenship rights of Korean immigrants in Japan following the end of the colonial era, still haunt the current discourse on migration and citizenship (Moriss-

Suzuki 2008). The latter concern leads us to the next element of my theoretical framework – concerns with stateness.

*5.2.5.1.3. Stateness issues*. Paradoxically, even if citizenship becomes relegated to instrumental status and thus loses some of its normative value, the identitarian dimension of citizenship does not lose its relevance, but instead becomes intertwined with the issues related to stateness, revolving around loyalty to the state that conceives itself ethnonationally. The extremely negative attitude towards dual citizenship in some of these countries needs to be interpreted as the intersection of both contentious inter-state relations, including actual and potentially feared border disputes, and internal relations in these multiethnic states.

Looking at debates surrounding dual citizenship, this pattern becomes apparent in many Asian countries. For example, it is possible to discern elements of concern with stateness in aforementioned Sri Lanka which pioneered symmetrical dual citizenship in 1987 and has been consistently approaching it from a utilitarian perspective. Although the interest in dual citizenship increased after the defeat of the Tamil forces (Manjula 2011), the possibility of Tamil emigrants supporting the Tamil Tigers (Kapur and McHale 2003: 55; The Economist Blog Banyan 2011) adds to the atmosphere of distrust between the government and dual citizens, as evident in the government representatives' claims that dual citizenship should only be available to those who do not have hidden agendas and who are loyal and committed to Sri Lanka (Berenger 2011).

The intersection of ethnic minority and external state, so common in the postcommunist countries, is especially evident in the attitude towards the Chinese minority in places such as Malaysia and Indonesia (eerily parallel to the historical economic

ghetoization and subsequent stereotyping of Jews in Europe). They are exacerbated by the explicit gearing of state policies towards preferential treatment of the native majority, which in turn could not be understood without taking into account colonial legacies (see Aguilar 1999 for an account of the relationship between colonial practices and subsequent delineations of citizenship in the region, and Swan Sik 1990: 164 *passim* for an account of the role of concerns regarding Chinese minorities in the developments of citizenship regulations throughout Asia).

In the context of Indonesian Chinese issues, the arguments of both proponents and opponents of citizenship liberalization are interlaced with emphasis on economic considerations and issues of discrimination and human rights. The 1998 legislation changes which removed discriminatory rules towards the Chinese minority in Indonesia should be seen more as a move to prevent an exodus of capital and not an ideological commitment to liberalization and multiculturalism (Aguilar 1999: 319-320), especially if one takes into account the anti-Chinese actions during the 1998 riots. Even though the explicit discrimination against the Chinese was ended by the revision of the definition of indigenous people to include all Indonesian-born citizens who never assumed a foreign citizenship, touted as revolutionary (The Jakarta Post 2006a, 2006b), nativism is deeply entrenched in the Southeast Asian discourse (The Jakarta Post 2012). In fact, even the wives from international marriages who spearheaded the push for the 2006 changes in Indonesian citizenship law and the 2011 changes in its immigration law (Rachman and Oktofani 2011; Sijabat 2011), whose combined effect was to combat gender inequality and ease the possibility for family members to live and work in Indonesia, have acknowledged that a full-blown allowance for dual citizenship would not be beneficial for the natives of

the country because of the competition in the labor market (Winarnita 2008: 311). When the 2011 immigration bill was passed, the press reported the minister for law and human rights pronouncing that "the new law contains changes on par with the "actual developments" brought by "increased mobility" of people due to globalization and efforts to keep the administration in line with ratified international conventions Indonesia has signed" (Grazella 2011). On the other hand we have the increasing calls by Indonesian diaspora for dual citizenship (Bev 2012). However, proposals for expansion of dual citizenship to adults based on arguments about globalization and the need to attract human and financial capital are counteracted by fears of exploitation of Indonesian resources by neighboring countries and neo-colonialist managerial trends (Lienau 2010; Prameswara 2010), despite the evidence of the approach by the Indonesian government that naturalization of foreign talents is a fast track to success, even if it is in a somewhat frivolous field such as sports (Teguh 2010). Overall, the changes in Indonesian regulation of the citizenship-migration nexus could be interpreted as a gradual opening and thus liberalization (Hamzah 2011), but such an evaluation would be akin to application of double standards with hope for a future liberalization trend.

As the situation on the Malaysia-Thailand border illustrates, in addition to the elements of the threat of an internal ethnic minority and external foreign power in the concerns with stateness, another key element of the discourse on dual citizenship are those of control of populations and cross-border movements. This issue is exemplified by the situation where thousands of people who live in Thai territory, but are of Malay descent, hold dual citizenship, although Malaysia forbids it. The dual citizens are perceived as disloyal by both sides – by Thailand due to separatism and by Malaysia due to political

differences between the government and the locally dominant political forces (Funston 2010). This in turn encourages mutual distrust between the countries and the talks between the two governments about exchanging personal data to identify the dual citizens solving the problem have been taking place for over a decade. The government officials claim such efforts to be limited to identifying criminals and perpetrators of violence in the troubled border region, but the ultimate goal is to eliminate dual citizenship (The Nation 2009). A similar discourse can be observed in Mongolia's pronouncements of cooperation with Kazakhstan in order to "solve the dual citizenship problem" (M.A.D. Investment Solutions 2011), despite periodic proposals of introducing the possibility of dual citizenship. Thus, inter-state vulnerability due to population constellations endows dual citizenship with the label of potential danger to stateness and therefore a problem that needs solving.

Even Japan, which has been the colonizer rather than the other way around like most other Asian states, feels threats, which become evident in the discourse on dual citizenship. Japan may succumb to China's political pressuring when it comes to questions like harboring North Korean defectors (The Yomiuri Shinbun 2011), but it is not willing to succumb to a potential "fifth column" by allowing dual citizenship, as mirrored by the occasional attempts to scare the public about Chinese people who would settle on underpopulated islands and then vote for their secession from Japan and accession to China (Arudou 2011).

Although the Singaporean discussion on the topic of citizenship also centers on attracting the desirable type of immigration ("immigrants have to be young, can contribute economically and can adapt to Singapore culture" (Yee 2011), it does not relent from the single citizenship principle except for those who are born into a dual citizenship situation

and are mandated to choose one of them by 21 (TR Emeritus 2011). In fact, Singapore is one of the countries that require documentary proof of renunciation of another citizenship for naturalization (Rubenstein 2003). Despite a "clinical" approach to migration via an economic lens (Yeoh and Lin 2012). Singapore exhibits squeamishness towards the propositions of dual citizenship and insistence that citizenship has to be about identity and belonging and putting down roots as a Singaporean. My conceptualization of citizenship as a stateness boundary maintenance regime would suggest that this is related to Singapore's vulnerability as a nation, considering that the public discourse continuously refers to the experience of both British and Japanese colonialism, the relatively recent independence from Malaysia, a multiethnic population composed mostly through immigration, the culture of transit, and an uneasy relationship with the kin-states of its main ethnic groups (Yee 2011).

Both a pursuit of remittances and concerns with historical animosities played a significant role in the Indian discourse on dual citizenship. The official inquiry into the situation of Indian diaspora acknowledged that the provision of the loss of Indian citizenship in cases of naturalization abroad was formulated in the Constitutional Assembly of India with an eye to the question of partition and the overwhelming need to delineate the citizenry of India vs. the citizenry of Pakistan, rather than with an intention of a blanket decision on dual citizenship (Report of the High Level Committee on the Indian Diaspora 2002: 514-517). As Chaturvedi (2005: 148) notes, the report which paved way for the special status of Indians abroad was virtually silent on Indians in the surrounding countries of South Asia, witnessing to the lingering effects of postcolonial legacies and border shifts throughout this region.

The already tumultuous issues of loyalty are further complicated by the legacies of the Cold War and ideological juxtapositions. For example, the question of loyalty is paramount in the dual citizenship discourse in the two Chinese countries, both of which highly mistrust each other. For example, Chinese lawmakers and the public discourse are overwhelmingly opposed to the practice of dual citizenship, which is illegal in China, and call for stricter control, including finding a way to crack down on "birth tourism" (Zhao 2012). In our scenario, China serves a role that is slightly similar to the role Russia plays for the postcommunist countries.

In Taiwan, the issue of dual citizenship is hotly debated every time a change in citizenship legislation is proposed (1990, 1995, 1999, 2006) and has actually moved in a more restrictive direction, even if in certain other aspects the law became more inclusive, first and foremost in the sense of gender equality (Shen 1995). The central concept in the discourse on dual citizenship has been that of loyalty. The movement of Chinese between the island and the mainland could be considered to be an issue of national security, thus their migration is regulated under a special law and they are not allowed to hold public posts ten years after naturalization (Wang 2012). However, the focus of the public debate has been on questioning the loyalty of public figures, especially those who have ties with USA (or other Western countries) or Japan, as exemplified by the concern with the citizenship of the president's daughter-in-law and her unborn child (Lin 2006).

The long-available dual citizenship for lay people was questioned but not restricted in light of concern with the overseas Chinese. However, it is still asymmetrical and requires naturalizing citizens to renounce their original citizenship, prompting occasional statements of potential benefits in attracting foreign talents and wealth. These argument are

interlaced with pointing out that 90 percent of naturalizing citizens in recent years have been from Southeast Asia, because their citizenship is of lesser comparative value than Taiwan, but for Westerners their original citizenship is more valuable than Taiwanese (Crook 2010). The same cannot be said for public officials, who were forbidden to hold dual citizenship after the incident of a legislator of overseas Chinese pedigree who held dual Taiwanese-Australian citizenship and in the late 1980s was found to be "a frequent visitor to Beijing" (Baum 1995: 28). In fact, Taiwanese politics have been characterized by the frequent outcry about not only dual citizenship, but even a permanent residency held in a foreign country by any public figure.[86] They get blamed both for disloyalty and for having "a life-jacket" when most of the population of the island does not have that luxury (Engbarth and Yeh 2008; Shih 2008). This subject has been fanned by both sides of the political spectrum against each other.

Constant debates have prompted the ruling KMT party to propose that officials cannot hold either a foreign citizenship or permanent residency, representing a backlash against the 1979 decree which specified that there was no law which would prevent a public official from holding permanent residency elsewhere (Mo and Shih 2008). However, while the government is willing to pursue the exclusionary model of loyalty in politics, it is moving in the direction of liberalization of citizenship acquisition. Presenting the 2014 proposal of amendments that ensure the availability of dual citizenship or permanent residency for the desirable foreign talents in science and research, they also liberalize citizenship attribution based on marriage to harmonize it with the International Covenant

[86] The case of Diane Lee, a legislator and a dual citizen of Taiwan and USA, was dragged out from 2008 till 2010 and ended with her imprisonment for corruption, spawning dozens of articles in the Taiwanese press. For residency as an issue, see Editorial 2009e; Mo 2008; Wang and Shih 2008.

on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights (Taiwan Today 2014). The balance between economic and normative concerns shifts based on the orientation of a given current government, but both the goal of attracting "high quality people" and the special treatment of ethnic Chinese are present in the official policy at the same time (Wang 2012).

Having reviewed the main elements of the dual citizenship discourse in Asian states, it is possible to discern the elements discussed elsewhere in the text – an interplay between the instrumental and identitarian aspects of citizenship prompted by the need to deal with demographic pressures, and the concerns with stateness. However, for a more definite test of the theoretical purchase of these elements, I turn to an in-depth comparative case of a country which allows us to draw surprising parallels with the Lithuanian case, despite seldom being compared with countries outside of Asia in social sciences. For the purposes of this dissertation, South Korea is an unexpectedly fitting point of comparison for the Lithuanian case due both to its experiences vis-à-vis colonialism and Cold War and to its express concern with fitting in the international community in terms of economic development and human rights considerations, all of which I discuss in the following subsection.

*5.2.5.2. Testing the theoretical purchase: the case of South Korea*. In contrast to the stunted attempt to introduce dual citizenship in Japan, the South Korean government did produce relevant changes in legislation and instituted conditional dual citizenship in 2010, although both countries are some of the fastest aging societies in the world with record low birth rates and thus experience similar demographic pressures for openness

(Kim A.E. 2009). An appreciation of the development of Korean nationalism in the past century in relation to Japanese colonialism and later in relation to the Cold War division of the nation (see Shin 2006; Kim 2008; Kim 2009) makes expansion of access to citizenship and removal the requirement to choose one citizenship at majority even more remarkable. As I established in the preceding subsection, understanding this case requires taking into account the combination of developmentalist, demographical and stateness imperatives.

*5.2.5.2.1. International marriages and human rights.* Gender equality, which is credited with a large role in the increase of dual citizenship in the mainstream accounts, has been one of the key features of the legislative changes in the 2000s throughout this region. In fact, the transition from temporary to permanent migration of women through the shading between labor and marriage migration has served as the major impetus for reconsideration of citizenship policies in relation to migrants (see Piper and Roces 2003) and for promotion of multiculturalism on governmental level, starting with the declaration of President Roh Moo-hyun that the trend towards multiculturalism was irresistible, which underlies the concern with integrating marriage migrants into Korean society (Doucette and Prey 2010).

According to some analysts, the difference in the result of the dual citizenship debates between Japan and Korea in essence stems from the combination of a greater increase in international marriages and the ability to build a societal-governmental consensus in South Korea (Aizawa 2011). In light of the ability of human rights activists to link the discourses on internationalization, citizenship and migration in both Japan (Gurowitz 1999; Gurowitz 2006; Shipper 2011) and South Korea (Kim 2009; Nam 2010), it is important to also take into account the relatively more immediate memories of

experiences of the Korean democratization movement at the end of the Cold War and the overall more radical and active orientation of Korean NGOs towards promotion of human rights (Yamanaka and Piper 2005: 25, 27).

Korean NGOs have been able to assume a de facto leadership of the public opinion on migration and have been more successful in producing the image of the international community as a "external positive other" and subsequently framing mistreatment of internal others as a national disgrace reminiscent of suffering that Korea experienced under the oppression of the "negative external other" (Japanese colonialism and USA militarism) (Kim 2009: 683, 679, 687-688). Furthermore, human right activists have been self-aware of their actions' impact on the position of ethnic Korean minorities in other countries (Lee 2011), especially Japan (Lee 2002: 123-124). This has translated into greater empathy towards and more beneficial developments for migrants. It is also interesting to note that the Overseas Koreans Act was instituted under President Kim Dae-jung, a former dissident who was eager to please the diaspora (Lee 2010: 237). Although in general human rights have not played such a prominent role in the citizenship discourse in Asia as they have in Latin America, South Korea could be considered to be one of the most prone to a human rights discourse among the countries in this region. I suggest that this openness is related to one of the key factors determining Korea's ability to accept dual citizenship – the pervasive prevalence of the developmental discourse, which has been the focal point shaping the politics of both the authoritarian and democratic regimes in this country (Chang 2012: 188-190 passim). The legitimacy of this orientation among Koreans has enabled a greater acceptance of globalization which was proactively embraced by the government as

a tool to further national development (Chang 2012; Shin 2006), and of migration and multiculturalism as its inseparable element.

South Korea has experienced some of the most marked changes towards greater gender equality in its legislation within the past two decades (Hunt and Weldon 2011: 162), in large part due to the ability of civil society to coalesce around a notion of citizen that initially indicated an anti-authoritarian stance and after the regime change came to be deployed in the activists' attempts to move from an exclusionary ethnonationalist towards a more inclusive civic conception of collectivity (Nam 2010: 80), as well as the aforementioned deployment of the desire to avoid embarrassment in the international community's evaluation of Korean performance in terms of human rights (Cheng 2011: 477-478). However, immigration officers' self-appointed role as promoters of multiculturalism and human rights of asylum seekers and marriage migrants goes hand in hand with efforts to tighten border controls and crack down on fake marriage claims (Park 2009b). The general stance is to enforce the distinction between those who move here and need to be integrated into Korean society to the point where they are expected to perform as Koreans do, vs. those who are temporary sojourners and thus do not merit a permanent place in society and similar efforts at integration (Lim 2009; Doucette and Prey 2010; Kim 2012). Ethnic Koreans and their families are considered to be the first hurdle that needs to be dealt with properly before one can even hope to deal with migrants' human rights (see Lee 2002: 119-120). Let us take a closer look at the mutual imbrications of developmentalism and ethnonationalism as mediated by stateness.

*5.2.5.2.2. The mutual imbrications of developmentalism and ethnonationalism*. Despite the prominence of abuse of immigrant wives and the concern with the plight of

children of international marriages in Korean public discourse, it is important to pay close attention to the role of economic considerations in the Korean discourse on diaspora and citizenship, which is considerably more pronounced than in Lithuanian discussions of diaspora's citizenship due to the hegemony of the developmentalist discourse. Actual developments in Korean legislation demonstrate how the strongly proclaimed ethnonationalist orientation towards the unity of the Korean ethnic nation was refracted through economic considerations.

The end of the Cold War increased opportunities for mobility and diaspora members, no longer held back by an iron curtain, started to trickle and then poor into South Korea. At first the government, true to the official policy of Koreans as one nation, welcomed co-ethnics from the other side of the Cold War divide, but when the numbers grew, and when China expressed its discontent with what it perceived as an affront to its sovereignty over its citizens (Seol and Skrentny 2009: 153; Lee 2002: 110; see Kim 2009 on how the historical developments in inter-state relations impinge on the transborder national membership politics), it turned cautious and kept adjusting its ethnic migration policies to curb the influx of low skilled laborers and mask it as more morally palatable family reunification or industrial training (Lee 2010). Even North Korean defectors became ideologically downgraded when they started to be perceived as a socioeconomic burden (Yoon 2012: 220). Similar to Japan's efforts to curb the ethnocultural impact of migration by recruiting the descendents of Japanese from Latin America which turned sour in the times of economic downturn and led to officials offering cash incentives for those immigrants to leave and be relegated to the end of line if they wanted to return to Japan (McNeill, Minoru, Martin, Setsuko and Jun 2009), the Korean preference for ethnic

Koreans from abroad has been qualified by the need to manage the economy, especially evident by the tightening of migration policy after both the 1998 and 2008 crises.

The revision of the Nationality Act in 1997 which effectively categorized ethnic Koreans from surrounding states as foreigners, and the timing and formulation of Overseas Koreans Act (OKA, introduced instead of a failed attempt at dual citizenship expansion (Lee 2002: 109)) which effectively split them into more highly skilled Koreans coming from the USA and low-skilled workers coming from China and introduced a differential regime of entry and freedom for each group, and the fact that when the OKA act was challenged for lack of parity, the discriminate treatment was removed from the law and shifted to the administrative realm of the visa regimes, shows the inextricability of economic and identitarian considerations (Kim 2008: 588; Seol and Skrentny 2009, Lee 2010, Lee 2002). As Seol and Skrentny (2009: 157) argue, the paramount role of economic considerations has shaped a hierarchical order of South Korean citizenship by placing ethnic Koreans in the West slightly lower than local Koreans, but higher than ethnic Koreans from East Asian countries, who were still above immigrants of other ethnicities, but not equal to "full Koreans" (see also Lee 2002).

When the expansion of dual citizenship beyond the age of majority was proposed, representatives of the government proclaimed that it is designed with the explicit goals to prevent brain drain, attract global talent and fight the low birth rate (Kim 2010). An exponential growth of immigration has brought about some vocal expressions of anti-foreigner sentiment, which was partly responsible for an aborted bill meant to tackle racial discrimination in 2009, but in sociological polls over two thirds of the population has expressed their support for anti-discrimination legislation in general and more than a half

of those surveyed supported non-discrimination of foreigners more specifically, with tolerance decreasing with age (Lee 2010). However, from the point of view of the state, the promotion of multiculturalism could be seen as an extension of population policy (Kim 2012: 209), a tool to enable globalization and soften its societal impact, rather than as an end in itself (Lee 2011). In the eyes of government officials who spearheaded the citizenship legislation changes, dual citizenship is necessary in the context of globalization, which was proclaimed as official governmental orientation by President Lee Myung-bak (Kang 2008). It is noteworthy that the officials expressed hope that the proposal of dual citizenship "will help attract competent individuals, especially second and third generation ethnic Koreans overseas" (Park 2009a), demonstrating the confluence of identitarian and economic considerations. As the head of the immigration service put it during the time of the proposal to expand dual citizenship, "population has already become a key factor deciding national power and competitiveness," and dual citizenship should be "should be comprehensively allowed to cope with the lowering birth rate as well as to accommodate talented foreigners as Korean citizens" (Park 2009b). The state exhibits an overwhelming desire to be able to use dual citizenship as a flexible tool rooted in economic considerations. However, it still produces a somewhat colorful list of eligibility criteria (like working as a manager in a Forbes Fortune List company or a researcher in a renowned laboratory), and has to deal with demographic concerns. In fact, the push for dual citizenship was conceived as part of a concerted campaign to fight record low birthrates called "Increase Koreans", next to such measures as an anti-abortion campaign (Byun 2011).

The state cannot be expected to be completely neutral in terms of identity, as numerous critics of the administrative set-up for evaluating dual citizenship eligibility have

noted (Park 2011). In this context, it is interesting that critics have noted that easier rules for permanent residency (which was also promoted by deploying both appeals to human rights international norms and goals of economic development (Lee 2010: 244)) would be more consequential and beneficial for economic attractiveness (Editorial 2011). Although intellectual proponents of dual citizenship have emphasized the myth of Korea as a homogeneous society, from the point of view of the state the main arguments for its availability have centered on, as some critics put it, "economic instrumentalism" and "ability profiling" (Editorial 2011). In fact, the original proposal of expanding dual citizenship was only aimed at Korean adoptees and foreign talents, and later expanded to include Koreans who, when forced to choose one nationality, overwhelmingly choose not the Korean one (Editorial 2011), and, as officials themselves have acknowledged, did not sufficiently address the predicament of weaker members of society (Lee 2009), once again pointing towards the key role of economic developmentalist imperatives in the Korean discourse of citizenship in general (Chang 2012: 193) in the push for citizenship legislation changes in particular.

*5.2.5.2.3. Reinforcing stateness*. The opponents of liberalization of citizenship legislation have emphasized the questions of loyalty to the nation, bringing up arguments that reach back to the 1948 debates on whether Koreans who collaborated with the Japanese imperialists should be citizens (Nam 2010: 84). The strongest expression of the opposition to dual citizenship is channeled through the issue of military conscription. The public and legislative opposition pushed the government to revise the dual citizenship bill in order to prevent "military draft dodgers," "tax evaders" and "anchor babies" from being able to take advantage of dual citizenship, strengthening the emphasis on loyalty to Korea, instituting

an oath against using foreign national rights while in Korea, and expanding the space for administrative arbitrariness (Editorial 2007; Editorial 2009a; Editorial 2009d; Kang 2008; Kim 2011a; KST 2011; Lee T. 2009a; Lee T. 2010c; Park 2009c). Young men's eligibility for dual citizenship will hinge on their fulfillment of military service, and initially the government was discussing applying a similar requirement of volunteer service for women (Kang 2008; Kim 2010). However, the government deemphasized the fact that this requirement will apply only to ethnic Koreans (but, note, not defectors from North Korea (Yoon 2012: 236)), which could reinforce the already negative sentiment towards what the public perceives as unfairness of dual citizenship (Editorial 2009d; Lee T. 2009a; Lee T. 2010a; Lee T. 2011a). In Korea, dual citizenship is definitely not symmetrical in its application to a much greater degree than merely the question of purported equality of its availability to immigrants vs. emigrants – this is one of the main differences from the Lithuanian case.

Some of the overseas Koreans have not been happy with the automatic extension of dual citizenship to them precisely because it limits their possibility to take advantage of opportunities available for foreigners in Korea, such as being able to come to study without having to serve in the military of the country they have not been living in (Chung 2012). Most of the foreign spouses, whose predicament enabled to sway the public opinion in favor of dual citizenship, will not in practice be able to benefit from the new legislation, since most of them come from other Asian countries which do not allow dual citizenship, prompting some disgruntled citizens to accuse the government of using the issue of multicultural marriage as a promotional tool in order to mask the fact that the majority of benefits of dual citizenship will still accrue to the better-off families, which has long been

at the root of the negative public opinion on dual citizenship (Editorial 2009a; Lee 2011b). The government has been so concerned with closing all the loopholes which could lead to potential abuse of dual citizenship that they instituted the possibility to order a person to choose one citizenship and divest them of dual citizenship if they "act against the national interest with regard to the economy, national security and diplomatic relations, or seriously disturb public order" (Kim 2010). Due to concerns with loyalty and state interests Korean law bars dual citizens from holding certain public offices, a trend that is in line with numerous other countries' approach to dual citizenship regulations. For example, dual citizens are obliged to perform military service, but are forbidden from pursuing a military career (Lee 2011a). Officials openly state that "it is improper for multiple citizenship holders to take part in investigations related to national security or state secrets, because in such cases Korea's interest sometimes clashes with other countries," that "people with a nationality other than Korean may make decisions that prefer the other country's interests to Korea's" and that "if a judge in cases about state secrets has dual citizenship, the public may not trust the judge's ruling" (Kim 2011b). The different emphasis on potential disloyalty of officials vs. lay citizens is reflective of the general concern with dual citizenship. Note that when they say that "it is inappropriate for foreign nationals to take part in cases or investigations that involve national interest, classified materials and security issues" (Arirang News 2011), dual citizenship holders are considered to be more foreigners than Koreans.

When the question revolves around economy, supporters of expansion of dual citizenship acknowledge that fixation on nationality hinders international competition, and, to be competitive, human capital is especially important for a resource-poor country like

Korea (Editorial 2009c). However, when it matters politically, true loyalty can ultimately only be single. On the other hand, although the ministry who drafted the bill had intended to restrict dual citizens' suffrage for a time period after naturalization and a majority of the population supported the idea of making dual citizens' voting rights conditional on having resided in Korea for a varying number of years, such a possibility was not even discussed by the legislators (Lee 2009b; Lee 2010d). Thus we see certain ambivalence towards ethnic Korean diaspora and their role from the perspective of stateness.

*5.2.5.2.4. Comparative purchase: South Korea via Lithuania.* After reviewing the characteristcs of the South Korean case, it can be claimed that South Korea and Lithuania share a certain number of parallel developments that impinge on citizenship regulation. The modern ethnonationalist self-consciousness emerged in light of the experiences of being oppressed by a colonizing power, Japan and Russia, respectively. Later, the national identification of each country was strongly shaped by the opposition to communist regime, North Korea for ROK and the same Russia in a different disguise for Lithuania. The conception of the state-nation nexus is marked by a strong current of stateness concerns that focus on security and loyalty and are challenged by both ethnonationalists and human rights activists on both sides.

The strands of debates directed against former colonizers closely mirror the arguments presented in the Lithuanian citizenship discourse, whose exclusionary impulses were explicitly aimed at representatives of nations whose states had at some point colonized all or part of Lithuania. Nationalism as a hegemonic way of conceiving of national identity (Shin 2006; Kim 2009), and the contradictory desire to have a place in the

globalized world and yet remain ethnocentric (Kim 2012: 205) is characteristic of both of these countries.

On the other hand, appeals to international human rights norms of nondiscrimination have played a large part in both South Korean and Lithuanian changes in citizenship legislation, and the Constitutional/Supreme Court has been an active player in the dynamics of relations with diaspora, migrants and citizenship regulation (Lee 2010: 241-242, Seol and Skrentny 2009: 158; Kim 2009: 155-156, Lee 2002: 116 passim), shifting its position from renouncing citizens right to vote abroad as prohibitively expensive to defending them as rights that are not dependent on obligations and prompting the government to pass necessary legislation (Chae and Moon 2012; Choi 2009).

The historical experiences of colonialism and Cold War communism cannot be completely left in the past by either of these countries, as long as Korea remains divided and as long as Lithuania remains within Russia's desired sphere of influence. What, then, could explain the leaning towards greater restrictiveness in Lithuania and towards relatively greater openness in South Korea? A more detailed analysis of the Korean political developments would require conducting a process tracing inquiry which goes beyond the scope of this chapter. However, based on the preliminary investigation, I suggest that the key factors that influence the divergence in outcomes can be sought in the greater embrace of globalization as a way of national development in Korea and a more restrictive international environment in the case of Lithuania, where using European norms as the referential point has forced the policy makers to retract the nonsymmetrical rules of dual citizenship availability instead of expand them. The continuing presence of the threat of Russia and fear of political and material interests of ethnic minorities which would be

at odds with the interests of the state conceived as a political vehicle of the Lithuanian nation has pushed the installment of symmetry in the more restrictive, rather than a more liberalizing, direction. At the same time, the fact that the debate about dual citizenship in South Korea appears to put a greater emphasis on pragmatic concerns than the discourse analysis shows in Lithuania's case may lend tentative support to the claim that the context of the euro-integration leads to a greater emphasis of the identitarian dimension of citizenship, presuming that the practical matters have been taken care of courtesy of the common European space regulations. Lack of a buffer against the normative power of international norms (Gurowitz 2006) has been a factor in both countries, but Lithuania's embeddedness in the institutional context which delegitimizes differential treatment based on identity has been more profoundly reflected in the critical juncture of its legislation on dual citizenship.

However, the importance of the identitarian dimension of Korean citizenship cannot be overlooked, even if it is not as explicitly discussed in the public debates about dual citizenship. There still are naturalization tests and classes that teach Korean language and try to instill an understanding of Korean culture and society (KST 2009a). Even the international families that could have been the first seeds of multiculturalism have been subject to this nationalizing impulse, as evident by the introduction of Korean language tests for prospective brides in other countries (AFP 2014). Despite the emphasis on dual citizenship as a tool to attract global talent, we have to remember that some of the primary targets of dual citizenship policy is the ethnic Korean abroad, including adoptees (explicitly arguing for the need to enable them to self-identify as "biologically Korean") (Park 2009c) and retirees who want to permanently settle in

Korea, and people who marry Koreans, thus becoming a part of the Korean nation. Both of these groups do not have to demonstrate possession of extraordinary talents required of those naturalizing for economic considerations. Furthermore, immigration officials have noted that those who want to naturalize and apply for dual citizenship due to their skills or talents still need to demonstrate their attachment and loyalty to Korea, even though they are exempt from length of residency requirements and naturalization tests, and their naturalization has to be deemed to be in the national interest (Kim 2010; KST 2009b; Lee 2009b; Lee 2010b). Finally, all those applying for dual citizenship have to sign an oath of loyalty to Korea and vow not to use their status as foreign nationals while in Korea. Taking into account these aspects, dual citizenship legislation serves as a tool to confirm the ethnic tilt in citizenship legislation and to sharpen the delineation of the Korean nation, or, as Lee (2010) claims, readjusting the nation-state nexus, instead of diluting it, as the postnationalists might like to claim. The intention to make military service obligatory only for those dual citizens who are ethnic Koreans (Lee 2011a) may be one of the most egregious indications of the subordination of dual citizenship to the ethnonationalist conception of the nation-state, but it is far from the only one. Therefore, as a supercharged mix of historical and contemporary inter-state vulnerabilities, both geopolitical and normative, and of economic and identitarian concerns, the story of South Korean dual citizenship is an especially illuminating counterpoint to the curious Lithuanian case.

*5.2.5.3. South Korea and comparative implications.* Having overviewed citizenship politics in Asia and conducted more in-depth analysis of the South Korean case, two key elements come into focus. First, surprisingly, it is possible to identify a pattern that is similar to the European the tension between instrumental and identitarian dimensions of

citizenship and the pressure of international human rights. The peculiarity of Asia comes through in the specific expressions of those dimensions. The instrumental dimension is centered around developmentalist ideologies and meets international norms in the need to deal with migration and international marriages, while the identitarian dimension is strongly expressed in the discourse on citizenship. The relatively strict regulations of dual citizenship in Asia help appreciate the role of the international human rights factors pointed out by the worldwide account of the spread of dual citizenship discussed in Chapter 1, such as concern with gender equality in citizenship attribution and international marriage, which stands in tension with the overwhelmingly ethnonationalist conception of stateness. Is it legitimate to say, as Brøndsted Sejersen 2008 and Aguilar 1999 suggest, that we can expect that dual citizenship will spread and be appropriated by Asian countries similarly to the way the concept of citizenship and of nation-state came from the West and was appropriated for local political contestations? The discussion in this subchapter appears to dampen such expectations. Concern with migration control is explicit in this region even if it comes at the expense of vulnerable inner populations, and speaks directly to my discussion of the concern with stateness in countries that have themselves been vulnerable to another nation/empire in the past. Thus, the second element that lends additional theoretical purchase to my propositions developed from the Lithuanian case is the role of postcolonial legacies in citizenship discourse. Although the instrumental dimension may be more pronounced due to the specificity of developmentalist states, the enduring relevance of citizenship as a nationhood and stateness boundary maintenance regime is even more pronounced. Since my analysis focused on the notion of conditions of possibility rather than probability, I can legitimately conclude that the building block of my theory do

appear to travel not only outside of postcommunist countries and Europe, but also outside the usual comparative counterparts and to the far reaches of the globe.

### *5.3. Concluding remarks.*

After overviewing certain trends in citizenship regulation across various regions of the world, I can restate the theoretical purchase of the insights gleaned from the Lithuanian case. A look at the Western countries of immigration has called into question the liberalization/ convergence hypothesis, and the analysis of the countries beyond Europe[87] offers a valuable addition to Howard's (2005, 2009) argument about the importance of colonial legacy for dual citizenship regulations. While his research was focused on the immigrant-receiving countries, the analysis performed in this dissertation and the comparative insights of this chapter help appreciate the importance of the legacy of colonialism and negative inter-state relations experiences when it comes to the countries of emigration, as well as providing a more balanced view of the question of securitization of citizenship-migration nexus. Both the cases of Mexico and South Korea [and Africa]

[87] The global reach of my analysis can be considered limited by a lack of attention to dual citizenship not only in the island states of the Carribbean and the Pacific, but first and foremost in Africa. Since not a lot of comparative studies have been conducted on these questions, it did not seem efficient to have a separate section to recap mostly the work of one author, Brownen Manby (2009, 2009), who gathered and analyzed the information about citizenship regulation in African countries. She calcularte that approximately half of the countries in Africa tolerate dual citizenship at least to a certain degree and shows how the tendency developed from the initial exclusiveness aimed against former colonizers, to greater permissiveness born of the desire to harness the economic potential of diaspora for developmentalist needs, to a tightening of naturalization laws due to the negative attitude towards immigration. Dual citizenship in African states is characterized by asymmetrical treatment of emigrants vs. immigrants and by enduring legacies of postcolonialism, such as the mismatch between country borders and ethnic groups, and the preoccupation with being autochtonous, which often leads to contesting claims of who is the most indigenous. There is a certain amount of grappling with the issue of giving citizenship to colonizer settlers, where oponents use arguments like their privileged position under colonialism, access to dual citizenship, and questionable loyalty (Young 2012: 299). Thus, a cursory glance at the dual citizenship discourse in Africa suggests that my suggestion to take into account postcolonial legacies and the position of entitlement claimed by previously oppressed people is applicable to this region, but more in-depth analysis is needed to flesh out such suggestions, which goes beyond the limits of my research.

testify to the lasting impact of historical vulnerabilities on the availability of dual citizenship and the question of symmetrical treatment of immigrants and emigrants.

The premise that extension of dual citizenship is directly linked to the lessening of conflict between states needs to be qualified by taking into account a certain "chronic low-grade fever" that characterizes the relationship between those who have dominated and those who have been dominated at some point in history. The analysis of the Lithuanian case helps appreciate the persistence of the anticolonial sentiment and its embedding in the very scaffolding of statehood and nationhood, and the comparative look at countries in other parts of the globe through the lens informed by the findings of the Lithuanian case reveals the cross-regional prevalence of this phenomenon.

Taking into account the data reviewed in this chapter, it is possible to finalize the conceptualization of stateness as the "missing ingredient" which helped us unpuzzle the Lithuanian case that was rendered unintelligible under the parameters laid out by the prevalend theories of citizenship studies. The term of stateness was coined in relation to the specific situation of postcommunist countries undergoing triple transition and has not been routinely applied to already established states. My contention and theoretical contribution to citizenship studies is to extend both temporal and geographical relevance of stateness. I showed that even after an independent state has been established and recognized by others, it does not loose the broader historical perspective, thus the state is permeated with awareness of its vulnerability, and continually maintains suspicion and/or resentment towards its former oppressors. I also demonstrated that it is possible to find concerns with stateness beyond the postcommunist region. First of all, the discourse of the need to maintain stateness and the suspicion and resentment towards others as past or

potential future oppressors, is essentially valid for all postcolonial countries. Second, if we keep in mind that the main constituent elements of stateness are territory and citizenry, it becomes evident that Western immigration states also experience pressures which can be perceived as challenges to stateness. Thus the concept of stateness offers a bridge between usually very remote domains of theories pertaining to emigration vs. immigration countries. I conceptualize citizenship as the main tool of boundary maintenance in a country whose dimensions of stateness are challenged, which in today's world include virtually every country.

## Conclusions

My research project started with a genuine puzzle of a case which exhibits developments in citizenship regulations that fly against the predictions of mainstream theories on several levels, and used the empirical puzzle to revisit those theories. I analyzed the historical context and development of Lithuanian citizenship regulation, the critical juncture in 2006 in which the Constitutional Court ruled both against an ethnonational character and the very fact of dual citizenship, the reaction by the public, the diaspora and the politicians, and investigated the evolving constitutional doctrine on citizenship in an attempt to understand why Lithuania, a quintessential emigration country, would institute a backlash against dual citizenship for emigrants. Through my work, I touched upon several clusters of social scientific research, such as European studies; postcommunist studies; studies in citizenship, migration, and nationalism; constitutionalism; and ideational inquiry.

The curious case of Lithuanian dual citizenship served as the grounds to reconsider three major assumptions of citizenship studies, namely, the hypothesis of convergence towards liberalization of citizenship regulation which sees dual citizenship as one of the main indicators of such liberalization; the treatment of European Union as the laboratory for postnationalism and liberal convergence and a catalyst of liberalization in postcommunist countries of Central and Eastern Europe; and the premise of emigrant-sending countries' interest in dual citizenship.

I produced four main arguments in relation to these assumptions, the first two primarily related to the liberalization/convergence hypothesis and the role of the EU, and the other two concerning dual citizenship. First, the liberal convergence thesis and the

purported lessening of the importance of national identity considerations are significantly challenged when migration issues are taken into account, which I demonstrate by discussing the developments in the European Union. Second, instead of mitigating the ethnonationalist proclivities of Central and Eastern European countries and guiding them down the postnationalist path, European integration exacerbates the tensions in the citizenship discourse due to the combination of norms that delegitimize identitarian discrimination in citizenship regulation on the one hand, and the paradoxical strengthening of the identitarian dimension of citizenship engendered by the postnationalist decoupling of rights and citizenship on the other. Third, dual citizenship should not be considered an indicator of liberalization and postnationalism if it is conceptualized in terms of state concerns with loyalty and identity. Fourth, emigration countries' approach to dual citizenship is much more nuanced and disaggregated than the mainstream predictions would suggest. However, taken together, these arguments still do not fully explain the curious case of Lithuanian dual citizenship. Therefore, this thesis is a theory-building endeavor, investigating the question of what conditions of possibility can account for the unexpected combination of restrictiveness of dual citizenship and adherence to international norms of nondiscrimination.

I proposed to focus on the notion of stateness which was formulated within the studies of democratic transition and consolidation, defined by Linz and Stepan (1996) as a security of a state's territorial and demographic boundaries. The empirical analysis of the Lithuanian case showed the pervasiveness of stateness concerns throughout the citizenship discourse, and I concluded that the unexpected restrictiveness of Lithuanian dual citizenship regulation is a result of a paradoxical gridlock produced by a combination of

the hegemony of international norms which delegitimize ethnic discrimination, and the continuous concerns with stateness which are intermeshed with identitarian imperatives. The fact that both of these limiting conditions of possibility are continuously pitted against the imperative to maintain ties with a significant diaspora means that the dual citizenship discourse is stuck in a feedback loop, rehashing the same arguments and the same attempts at legislative solutions since 2006, thus demonstrating the fundamental role of all three of these elements in understanding the dual citizenship discourse.

Having distilled the main theoretical propositions from the Lithuanian case, I proceeded to test their comparative applicability. I overviewed the discourse and regulation of citizenship in other postcommunist countries, in Western Europe and the settler immigration states, in Latin America and in Asia. I concluded that all three elements are relevant more broadly in citizenship discourse, but their combinations may differ. Similarly to Lithuania, the citizenship of ex-USSR countries is to a large extent shaped by the relationship with Russia, as well as by their co-ethnic diaspora situation. The conditions in Central and Eastern European states are similar to Lithuania due to their participation in the common European space, having gone through same conditionality pressures, and going through the experience of the simultaneous delegitimization and re-iteration of ethnonationalist discourse on citizenship. In Western European states, we saw the re-emphasis on the identitarian dimension in reaction to migrant pressures which should be interpreted as the West's own brand of threats against which they want to maintain the stateness boundaries. Even the traditional immigration/ settler states exhibited symptoms of the reinforcement of the identitarian dimension of citizenship. Although Latin America, a region most often compared to postcommunist Europe under the rubric of transitology,

is considered to have relatively liberal dual citizenship policies, a closer analysis revealed the pervasiveness of the identitarian dimension and of postcolonial legacies, in addition to the struggles for participatory citizenship rights which can be construed as challenges to stateness.

In order to stretch the test of comparative theoretical purchase to its limits, I chose to conduct closer investigation of the dual citizenship discourse in Asia, which is arguably the farthest removed from Central and Eastern European politics and society. However, I found a fascinating amount of comparability. Studying South Korea as a shadow case, I found evidence of the relevance of all three explanatory elements gleaned from the Lithuanian case: the pressure of international norms, the pervasiveness of ethnonational identity, and the concerns with stateness stemming from the legacy of colonialism and from new pressures of globalization.

There exist certain differences, such as the continuation of relative importance of the instrumental dimension of citizenship due to the developmentalist approach in Asia and due to the precarious position of migrants without citizenship, and a more bottom-up rather than top-down or horizontal influence of international norms compared to Lithuania, but the essential elements of the story are remarkably similar. These findings give me confidence in offering my insights for further use. It would have certainly be better if I could have analyzed dual citizenship everywhere rather than only in select regions, but that is a task for the future, as the groundwork has been laid out. In sum, if we want to understand citizenship regulation in a particular country, we should look at the constellation of the conditions of possibility, where, on the one hand we have the tension between the ethnonationalist conception of the nation vs. the international human rights

regime and its imperative of non-discrimination, and on the other hand we have the tension between the interests of the state shaped by historical legacies of postcolonialism that work *against* openness vs. current migratory pressures *for* openness. Citizenship operates within these parameters and is employed as a mechanism for continuous stateness boundary maintenance in a world that challenges states and highlights the tensions between rights and duties of citizens on the one hand, and belonging to a national community on the other hand.

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# Appendices

## Appendix A

## Content Analysis Keyword Dictionary

Dimension: ETHNIC

Keywords: culture, customs, descendants, descent, ethnic, ethnical homeland, ethnical nation, ethnicity, forefathers, identity, (native) language, Lithuanian nation, Lithuanians, mentality, national minorities, nationalities, nominal nation, non-Lithuanian, origin, repatriate(d), repatriation, traditions.

Dimension: CIVIC

Keywords: civic Nation, civil Nation, discriminate(d), discrimination, equal, equality, human right(s), national concord, reside(d)(ing), residence, resident, rule of law, settle(d), settlement, state language, territory, tolerance.

Dimension: INTENSITY

Keywords: crucial, emphasize(d), important, must, need(s), obvious(ly), only, particularly, pay attention, precisely.

DIRECTIONAL keywords:

NEGATIVE: deficient, deviate(s), groundless, impossible, in conflict with … Article, unacceptable.

POSITIVE: inalienable, inseparable, undeniable.

Dimension: INTERNATIONAL

Keywords: Convention, Europe, European, EU, international, treaty(-ies), United Nations, UNO, universal, world.

Dimension: STATENESS

Keywords: independence, independent, loyalty, (give an) oath, occupation, state [except in conjunction with "department", when it indicates the name of a government institution, or with "news", when it indicates the name of the official periodical publication of the government, and thus does not directly invoke the more fundamental notion of the state of Lithuania], statehood.

## Appendix B

## Content Analysis Results

**Figure B1. Ratio of means (Ethnic : Civic)**

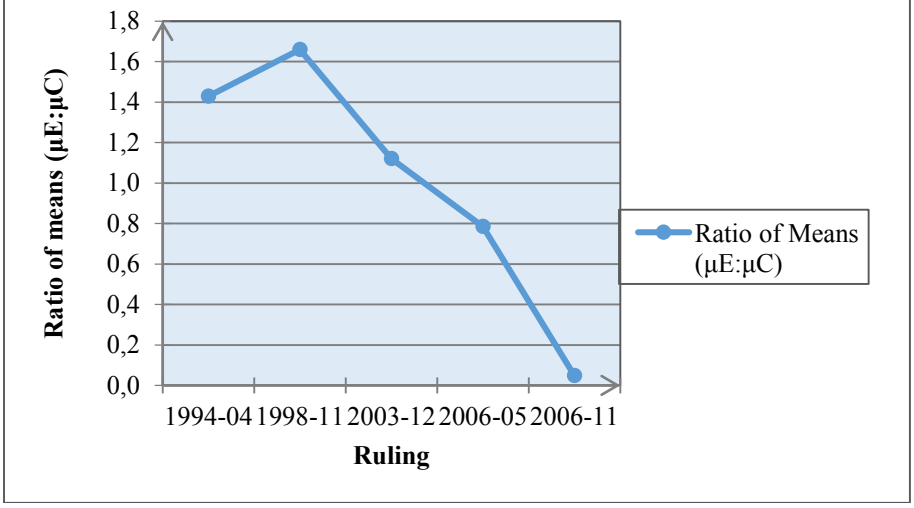


**Figure B2. Difference in means (Ethnic - Civic)**

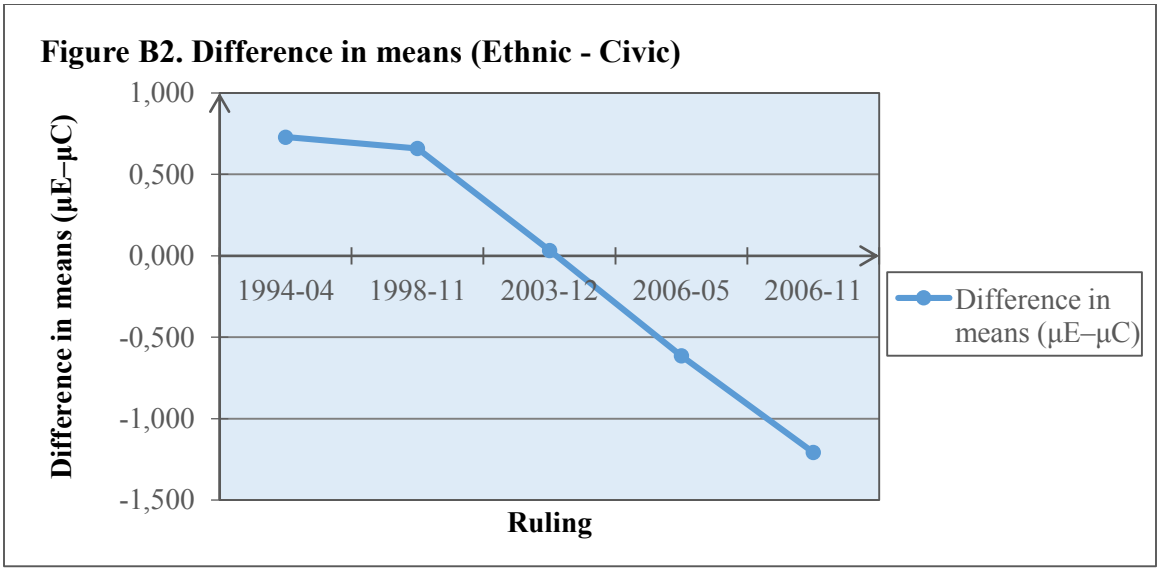

**Figure B3. Frequency of paragraphs with "Ethnic" keywords of negative valence**

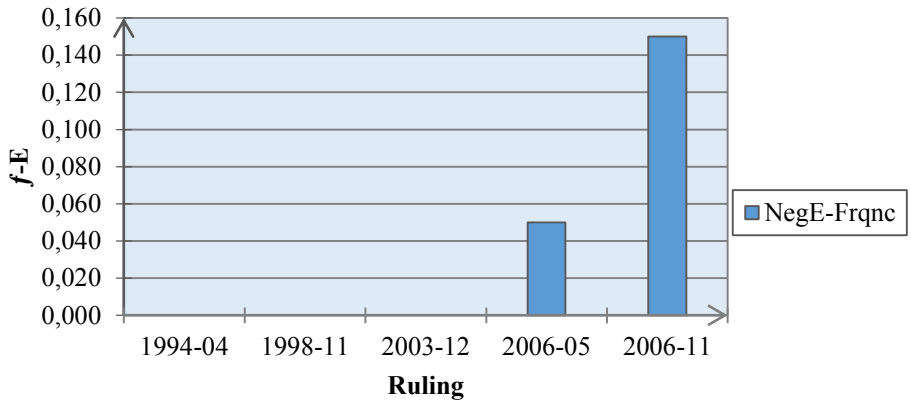


**Figure B4. Frequency of paragraphs with "Civic" keywords of negative valence**

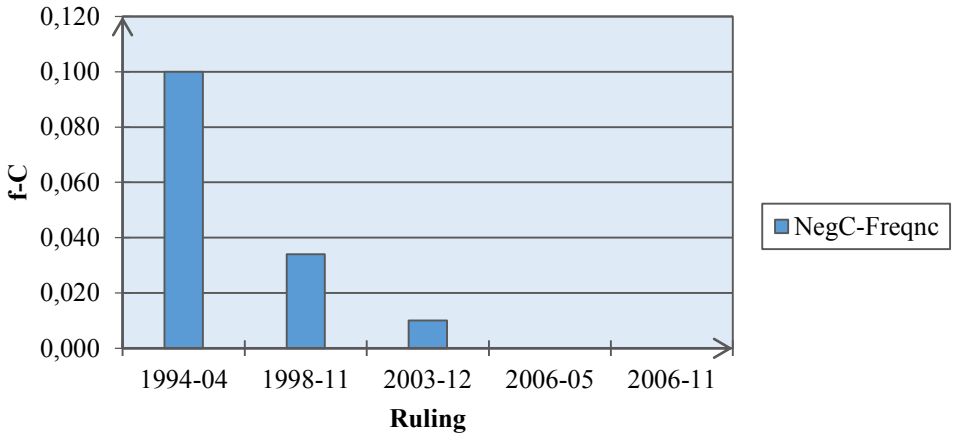

**Figure B5. Frequency of paragraphs with "International" keywords**


**Figure B6. Trends in paragraphs with "International" keywords of the "Ethnic vs. Civic" dimension**

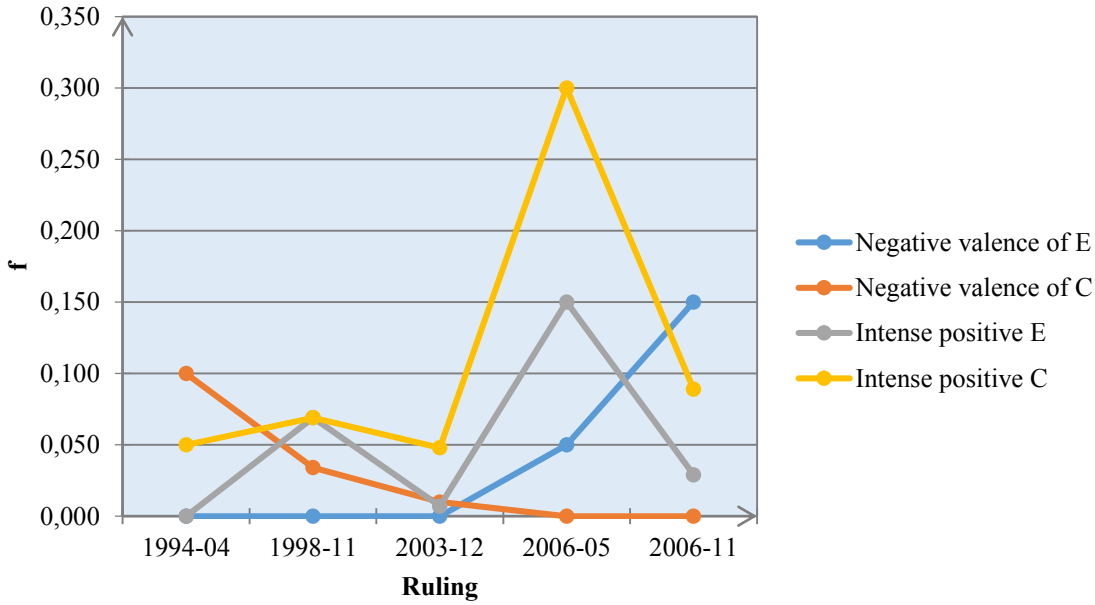

Table B1. Parameters of Constitutional Court rulings (frequencies of "civic" and "ethnic" keywords).

| Date of Ruling | N of § | N of § with E | N of § with C | N of § with I | N of § with S | *f* of § with E | *f* of § with C | *f* of § with I | *f* of § with S |
|---|---|---|---|---|---|---|---|---|---|
| 1994-04 | 20 | 4 | 10 | 4 | 12 | 0.200 | 0.500 | 0.200 | 0.600 |
| 1998-11 | 29 | 3 | 8 | 2 | 23 | 0.103 | 0.276 | 0.069 | 0.793 |
| 2003-12 | 290 | 9 | 91 | 15 | 126 | 0.031 | 0.314 | 0.052 | 0.434 |
| 2006-05 | 20 | 10 | 15 | 5 | 16 | 0.500 | 0.750 | 0.250 | 0.800 |
| 2006-11 | 313 | 114 | 109 | 25 | 205 | 0.364 | 0.348 | 0.079 | 0.655 |

Notations: § – paragraphs, E – "ethnic" keywords, C – "civic" keywords, I – "international" keywords, S – "stateness" keywords, N – number, *f* – frequency, μ – arithmetic mean.

Table B2. Parameters of Constitutional Court rulings ("ethnic" and "civic" keywords ratio, means and differences).

| Date of Ruling | Ratio $f_E:f_C$ | Ratio $f_I:f_S$ | Difference $f_E-f_C$ | Difference $f_I-f_S$ | Mean of Intensity and Valence $\mu_E$ | Mean of Intensity and Valence $\mu_C$ | Ratio $\mu_E:\mu_C$ | Difference $\mu_E-\mu_C$ |
|---|---|---|---|---|---|---|---|---|
| 1994-04 | 0.400 | 0.333 | 0.200 | -0.400 | 1.000 | 0.700 | 1.429 | 0.729 |
| 1998-11 | 0.373 | 0.087 | 0.304 | -0.724 | 1.660 | 1.000 | 1.660 | 0.660 |
| 2003-12 | 0.099 | 0.119 | 0.047 | -0.382 | 1.222 | 1.088 | 1.121 | 0.033 |
| 2006-05 | 0.667 | 0.313 | 0.427 | -0.550 | 1.100 | 1.400 | 0.786 | -0.614 |
| 2006-11 | 1.046 | 0.121 | 0.967 | -0.576 | 0.061 | 1.257 | 0.049 | -1.208 |

Table B3. Parameters of Constitutional Court rulings (median, mode, valence of "ethnic" and "civic" keywords).

| Date of Ruling | Median of E | Median of C | Mode of E | Mode of C | *f* of § with negative valence of E | *f* of § with negative valence of C | Ratio *f*-E-:*f*-C | Difference *f*-E–*f*-C | *f* of § with intense positive E | *f* of § with intense positive C | Ratio *f*+2E+2:*f*+2C | Difference *f*+2E+2–*f*+2C |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1994-04 | 1 | 1 | 1 | 1 | 0.000 | 0.100 | NA | -0.100 | 0.000 | 0.050 | NA | 0.050 |
| 1998-11 | 2 | 1 | 2 | 1 | 0.000 | 0.034 | NA | -0.034 | 0.069 | 0.069 | NA | 0.000 |
| 2003-12 | 1 | 1 | 1 | 1 | 0.000 | 0.010 | NA | -0.010 | 0.007 | 0.048 | 0.146 | 0.041 |
| 2006-05 | 1 | 1 | 1 | 1 | 0.050 | 0.000 | NA | 0.050 | 0.150 | 0.300 | 0.500 | 0.150 |
| 2006-11 | 1 | 1 | 1 | 1 | 0.150 | 0.000 | NA | 0.150 | 0.029 | 0.089 | 0.326 | 0.060 |

# Curriculum vitae

| | |
|---|---|
| ***1. Name, Surname*** | EGLE VERSECKAITE |
| ***2. Date of birth*** | 05/03/1979 |
| ***3. Nationality*** | LITHUANIAN |

***4. Education***

| Institution | Degree | Year |
|---|---|---|
| Johns Hopkins University | Ph.D. in Political Science | 2015 |
| Vilnius University | M.A. in Political Science (*magna cum laude*) | 2004 |
| Vilnius University | B.A. in Political Science | 2002 |

***5. Academic work experience***

| Dates (from-to) | Institution | Position |
|---|---|---|
| From 10/2012 | ISM University of Management and Economics | Senior lecturer |
| 10/2012-01/2014 | Vilnius University Institute of International Relations and Political Science | Lecturer |
| 01/2011 | Johns Hopkins University | Instructor |
| 09/2006-05/2011 | Johns Hopkins University | Teaching Assistant |
| 01-05/2005, 01-05/2004 | Creighton University | Research Assistant |
| ***6. Practical experience*** | Homeland Union Political Party Information Center, Vilnius, Lithuania (political analyst, research and development director);<br>Civil Society Institute, Vilnius, Lithuania (leader of the national adult civic education pilot project);<br>Ministry of Education and Science of the Republic of Lithuania, Vilnius, Lithuania (preparation of national reports);<br>Foundation for Educational Change, Vilnius, Lithuania (program coordinator). | |
| ***7. Subjects taught*** | Social Research Methods, Business Research Methods, EU Politics, Economics and Politics of Migration, International Migration, Citizenship and Nationalism, Introduction to the European Union (as a TA), Introduction to Comparative Politics (as a TA). | |

***8. Publications***

| Type of work | Publication |
|---|---|
| Editor | Verseckaitė, Eglė (ed.). 2008. *Sąjūdis Šiaulių rajone [The Lithuanian Independence Movement* Sąjūdis *in Šiauliai region]*. Šiauliai: Laimužė. |
| Article | Clark, Terry D., Eglė Verseckaitė, and Alvidas Lukošaitis. 2006. The Role of Committee Systems in Post-communist Legislatures: A Case Study of the Lithuanian Seimas. *Europe-Asia Studies 58*(5):731-750. |
| Article | Clark, Terry D., and Eglė Verseckaitė. 2005. PaksasGate: Lithuania Impeaches a President. *Problems of Post-Communism 52*(3):16-24. |
| Book chapter | Verseckaitė, Eglė. 2002. Politinė kultūra: koncepcija ir raidos analizė [The Analysis of the Development of the Concept of Political Culture]. Pp. 8-48 in *Politinė kultūra [Political Culture]*, ed. A.Jankauskas. Vilnius, Kaunas: Naujasis lankas. |

| ***9. Conference presentations*** | |
|---|---|
| **Dates** | **Conference title, presentation** |
| 08/2014 | American Political Science Association (APSA) Annual National Conference, Washington, D.C., USA. „Emigration and Dual Citizenship at the Intersection of the EU and the Postcommunist World" |
| 04/2012 | Midwest Political Science Association (MPSA) Annual National Conference, Chicago, IL, USA. „Between Equality and Ethnicity: A Comparative Inquiry into Citizenship Regulation" |
| 04/2011 | Midwest Political Science Association (MPSA) Annual National Conference, Chicago, IL, USA. „Cornered by Ideas: Wither "Lithuania for Lithuanians"?" |
| 04/2009 | Midwest Political Science Association (MPSA) Annual National Conference, Chicago, IL, USA. „The Splendor and Misery of Civil Society in Central and Eastern Europe" |
| 04/2008 | Midwest Political Science Association (MPSA) Annual National Conference, Chicago, IL, USA. „Migration and Dual Citizenship: New Europe, Old Nationalism?" |

| ***10. Academic training (recent 5 years)*** | | |
|---|---|---|
| **Dates (from-to)** | **Institution** | **Title of training/courses** |
| 09-10/2010 | Johns Hopkins University | Responsible Conduct of Research |
| 01-05/2009 | Johns Hopkins University | Preparation for University Teaching |

| ***11. Language skills*** | |
|---|---|
| **Language** | **Level** |
| Lithuanian | Native |
| English | Advanced |
| Russian | Intermediate |